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ERROR.

SUPREME COURT OF THE UNITED STATES.

No. 387.

THE CITY OF NEW ORLEANS, PLAINTIFF IN ERROR,

vs.

THE NEW YORK MAIL STEAMSHIP COMPANY.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA.

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WRIT OF ERROR FROM THE CIRCUIT COURT OF THE UNITED STATES, SIXTH JUDICIAL CIRCUIT AND EASTERN DISTRICT OF LOUISIANA.—No. 3,852.

THE NEW YORK MAIL STEAMSHIP COMPANY, defendant in error,
vs.
THE CITY OF NEW ORLEANS, plaintiff in error.

Sullivan, Billings & Hughes, for defendant in error.
Buchanan & Gilmore, for plaintiff in error.

Returnable in the Supreme Court of the United States on the first Monday of December, 1866.

1 Circuit court of the United States for the sixth circuit and eastern district of Louisiana.

NEW YORK MAIL STEAMSHIP C'Y
vs.
THE CITY OF NEW ORLEANS. } No. 3,852.

Petition for injunctions, filed April 18th, 1866.

To the honorable the judges of the circuit court of the United States for the sixth judicial circuit and eastern district of Louisiana:

The petition of the New York Mail Steamship Company respectfully shows and states that your petitioner is a corporation incorporated under the laws of the State of New York, and domiciled in, and a citizen of the State of New York.

That the city of New Orleans, hereinafter named, is a polit-
2 ical corporation domiciled in and a citizen of the State of Louisiana.

That the said city of New Orleans, on the eighth day of July, A. D. eighteen hundred and sixty-five, by a contract in writing hereto annexed and made part of this petition, leased to your petitioner for the period of ten years, at a rent of eight thousand dollars per annum, the following described property, opposite Jackson Square in said city, viz: "All that portion of the landing on the Mississippi river, extending from the upper line of the space now allotted and set apart for a ferry landing, opposite to St. Ann street, in the second district, for a distance of six hundred (600) feet up stream, by a depth of two hundred feet from the front line of the wharf, according to a plan on file in the office of the city surveyor, which plan is herewith identified with this act by me, notary, and marked 'ne varietur,' but in no event shall the line fronting on Levee street be changed."

That under said contract of lease the right was granted to your petitioner to hold and occupy the said premises for the term
3 of ten years from the said eighth day of July, eighteen hun-

dred and sixty-five, and to construct, build, and for the said term maintain and occupy a new wharf in front of said premises, and keep the same enclosed during said term.

That all and singular the stipulations and undertakings, made and entered into in said contract of lease on the part of your petitioner, have been faithfully performed, and they now have lawfully the rights hereinbefore specified, as well as all those in said contract of lease granted.

That having, at the date of said lease, entered upon, and ever since remained in the possession of, said premises under said lease, your petitioner has enclosed the same, and has thereon constructed and built certain buildings and sheds and wharves at an expense of eighty thousand dollars, or thereabouts, and is now in occupation of said premises and buildings so enclosed for the purposes specified in said lease.

That the said city of New Orleans is about to, and unless prevented by the order of injunction of this court will, remove and tear down said enclosure and buildings and sheds upon said premises, to
4 the great injury and damage of your petitioner, as your petitioner is informed and believes, and have already commenced removing and tearing down the same.

That by reason of the interference of said city with the possession of your petitioner of said premises, and the removal by said city of said buildings and enclosures, your petitioner has already suffered damages to the extent of twenty thousand dollars.

Wherefore your petitioner prays that the said city of New Orleans may be cited to answer this petition, and that this petition verified, and the bond in an amount to be determined by this honorable court, being considered that an order of injunction may be issued by this court, prohibiting and enjoining the said city of New Orleans and all their agents, employees, officers, and surveyor, and all contractors and sub-contractors from removing said enclosures, buildings, sheds, and wharves, or any part thereof, and from in any way interfering with the same, or any part thereof, or from in any way interfering with or disturbing your petitioner in the exclusive occupation
5 of said premises until the further order of this court; and that your petitioner may have judgment; that said order of injunction, as above prayed for, be made perpetual during said term of ten years from the eighth day of July, eighteen hundred and sixty-five, and that said city of New Orleans be condemned to pay to your petitioner the sum of twenty thousand dollars damages suffered as above set forth, and for all general and special relief in the premises just and equitable.

(Signed) SULLIVAN, BILLINGS & HUGHES,
Attorneys for petitioner.

STATE OF LOUISIANA, *Parish of Orleans, ss:*

J. M. Courteney, being duly sworn, deposes and says that he is the attorney in fact of the New York Mail Steamship Company in the

above petition named, and that the allegations contained, and the facts stated, in the foregoing petition are true.

(Signed) J. M. COURTENAY.

6 Sworn to and subscribed before me this 18th April, 1866.

(Signed) F. B. VINOT, *D'y Clerk.*

Order.

Let the injunction issue as prayed for upon the plaintiffs, the New York Mail Steamship Company, giving bond, conditioned according to law, in the penal sum of ten thousand dollars, with good and solvent security.

April 18th, 1866.

(Signed) E. H. DURELL, *Judge.*

Lease annexed to petition, filed April 18th, 1866.

STATE OF LOUISIANA, *City of New Orleans:*

Be it known, that on this eighth day of July, A. D. eighteen hundred and sixty-five, and the eighty-ninth of the independence of the United States of America, before me, Andrew Hero, a notary
7 public in and for the city and parish of New Orleans, State of Louisiana, duly commissioned and qualified, and official notary for said city, personally came and appeared the honorable Hugh Kennedy, mayor of the city of New Orleans, and herein acting in his said capacity; and the said mayor aforesaid declared that by virtue of the authority in him vested by resolution No. , signed by the chairman of the bureau of finance and the chairman of the bureau of streets and landings, adopted on the eighth day of July, one thousand eight hundred and sixty-five, a true copy of which is hereto appended for reference, he does by these presents contract and agree in the name and on behalf of the city of New Orleans with the New York Mail Steamship Company, a corporation chartered under and in accordance with the laws of the State of New York, and herein duly represented by Asahel S. Mansfield and John M. Courtenay, by virtue of a power of attorney executed by James A. Raynor, president of said company, before Sylvester Lay, a notary pub-
8 lic for the city and State of New York, under date of the twenty-eighth day of April, eighteen hundred and sixty-five, and hereto annexed for reference, as follows, to wit:

First. The right is hereby granted by said city of New Orleans, to said New York Mail Steamship Company to inclose and occupy for their own exclusive use and benefit for and during the space of ten (10) years from the date of this agreement all that portion of the landing on the Mississippi river extending from the upper line of the space now allotted and set apart for a ferry landing opposite to St. Ann street in the second district for a distance of six hundred (600) feet up stream by a depth of two hundred feet from the front line of the wharf, according to a plan on file in the office of the city surveyor, which plan is herewith identified with this act by me notary,

and marked ne varietur, but in no event shall the line fronting on Levee street be changed.

Second. The said New York Mail Steamship Company shall
9 at their own cost construct and build a new wharf in front of the landing hereinbefore designated, with new bulk heads to retain the levee earthwork throughout the whole extent of the front assigned to them as aforesaid, they supplying all the materials and labor for the same: and the said New York Mail Steamship Company moreover contracts and agrees to keep the same in complete order and repair until the expiration of his lease, and to deliver the same in good order and repair to the city authorities at the termination of this contract, the natural wear and tear of the same only excepted.

Third. The said New York Mail Steamship Company shall have the right at their own cost and charges to construct such buildings and sheds within the said enclosed space as may be required for the transaction of the regular shipping and freighting business of the company and for the accommodation of the ships and vessels belonging to them or running in connection therewith; provided, however, that said buildings and sheds be constructed in accordance with existing ordinances relative to buildings within fire limits, and shall be covered with iron or slate roofs.

10 Fourth. It is expressly stipulated that the wharves herein mentioned are to be completed within one year from the date of this agreement in a proper and workmanlike manner and of new materials, to be well protected by a line of heavy fender piles in front, of sufficient size and strength to enable the largest ships (of a company) to land and load at the wharf without damage. The whole of said improvements of wharves, fender-piles, bulk heads, sheds, buildings, and enclosures shall be kept in good repair by the company at their expense and charge up to the expiration of this lease.

Fifth. The said New York Mail Steamship Company shall have the right to avail themselves of the use and application of steam power, so far as the same may facilitate their business in the more convenient loading, unloading, and storage of freight and cargoes on board of their vessels, or of any ships or vessels used or chartered by them, and to construct and employ on the premises herein leased such engines and machinery as may be necessary or convenient for such purposes.

Sixth. The lease shall not be transferred by the company
11 without the written consent of the mayor of the city, and in case of default on the part of the company to perform their engagements as herein stipulated, according to the true intent and meaning thereof, the city of New Orleans shall have the right to annull this lease and take possession of all the improvements made by the company in the space assigned to them as aforesaid. It is further agreed that at the expiration of the term of this agreement and contract of lease all the improvements, wharves, bulk heads, sheds, and buildings remaining on the premises leased shall become the property of the city of New Orleans without payment of any consideration for the same.

Seventh. The said company shall abstain from asserting any claim for wharfage or levee dues from any sailing, steam, or other sea-going vessels not owned or chartered by them, and all such dues chargeable to vessels landing at or using the wharves herein leased to the company shall be collected by the city; providing also, however, that in case of any such vessel owned or chartered as above shall proceed to any other part of the port to load or deliver
12 cargo, such vessel so loading or delivering cargo shall pay the usual wharfages, whether owned by the company or not. It is also further agreed that the company shall allow no Mississippi river or other river steamboat or river craft to unload merchandize at their wharves for reshipment on the company's vessels or other vessels or for sale here, nor shall any Mississippi steamboat or other river craft receive cargo at the company's wharves for reshipment or for sale here.

Eighth. The consideration to be paid by the said company for the lease herein granted by the city of New Orleans and all other rights and privileges incident to the agreement as herein stipulated shall be the payment of a rent at the rate of eight thousand dollars ($8,000) per annum, payable in monthly instalments by notes, for which the said company shall execute their promissory notes in due form, and in case of default in making their payments punctually, the city of New Orleans shall have the right to annul said lease, and take possession of the premises and improvements without payment
13 thereof without applying to a court of justice.

Ninth. It is agreed that the city shall not be responsible to the company for any damage that may happen to the property of the company in case the ground shall cave or sink into the river.

Tenth. If, at the expiration of this lease, those who may at the time represent the city of New Orleans, shall deem it proper to continue the landing and property therein leased for the use herein contemplated, and not to appropriate the same to other uses, then it is agreed that the New York Mail Steamship Company shall have a preference as lessees for a renewal of the lease over other applicants offering the same terms for such period of time as may then be agreed upon.

Eleventh. The lease granted by the city of New Orleans to the present lessees on the ninth of January, 1864, is hereby superseded and set aside by this contract and agreement of lease, and after the date hereof, the present agreement taking effect in its place and stead.

Twelfth. It is further agreed that, in case the company shall be obliged to remove the buildings and enclosures constructed by
14 them on the levee, by reason of any action of other parties than the city, the company shall not have the right to demand damages in consequence from the city of New Orleans.

The United States internal revenue tax is paid and cancelled, as per stamp, for the sum of one hundred and sixty dollars, annexed to original act on file in my office.

Thus done and passed in my office, at the city of New Orleans, in

the presence of Charles Frederick Barry and William McC. Jones, competent witnesses, who have signed their names with said parties, and me, notary.

(Original signed)

HU. KENNEDY, *Mayor.*
A. S. MANSFIELD.
J. M. COURTENAY.
WM. McC. JONES.
CHS. F. BARRY.
ANDREW HERO,
Not. Pub.

A true copy of the original.
(Signed) ANDREW HERO, *Not. Pub.*
A true copy.

15 Know all men by these presents, that we, New York Mail Steamship Company, by J. M. Courtenay, attorney in fact, as principal, and A. S. Mansfield, as surety, are held and firmly bound, jointly and severally unto the city of New Orleans, in the sum of ten thousand dollars, lawful money of the United States of America, to be paid to the said city of New Orleans, and assigns, for which payment well and truly to be made, we bind ourselves, and each of us by himself, and each of our heirs, executors, and administrators, firmly by these presents; sealed with our seals, and dated the eighteenth day of April, in the year of our Lord eighteen hundred and sixty-six.

Whereas, the New York Mail Steamship Comp'y has this day presented a petition to the honorable the circuit court of the United States for the 6th circuit holding sessions in and for the eastern district of Louisiana, praying for a writ of temporary injunction for the purposes therein set forth.

Now, the condition of the above obligation is, that we, the above bounden the New York Mail Steamship C'y and A. S. Mansfield, will well and truly pay to the said city of New Orleans, the defendant in said injunction, all such damages as it may recover against us in case it should be decided that the said injunction was wrongfully obtained.

New York Mail Steamship Co.—
By J. M. COURTENAY, [L. S.]
Attorney.
A. S. MANSFIELD. [L. S.]

Signed, sealed, and delivered in the presence of—
F. B. VINOT, *D'y C'k.*

Filed April 18th, 1866.
(Signed) CHAR'S CLAIBORNE, *Clerk,*
By F. B. VINOT, *D'y Clerk.*

16 *Injunction, issued April 18th, 1865.*

UNITED STATES OF AMERICA:

Circuit court of the United States, sixth circuit and eastern district of Louisiana.

NEW YORK MAIL STEAMSHIP COMPANY
vs.
THE CITY OF NEW ORLEANS. } No. 3,852.

The President of the United States to the city of New Orleans, all their agents, employees, officers, and surveyors, and all contractors and sub-contractors, greeting:

Whereas it has been represented to us in our said circuit court, on the part of the New York Mail Steamship Company, by their petition lately exhibited against you, to be relieved touching and concerning certain matters and things in said petition contained; now, therefore, in consideration of the premises and of the allegations in said petition contained, you, the city of New Orleans, your agents, and attorneys, and each of you, are hereby commanded and
17 strictly enjoined, under the penalty of the law, that you absolutely refrain and desist from removing the enclosures, buildings, shades, or wharves, or any part thereof, and from in any way interfering with the same, or any part thereof, from in any way interfering with or disturbing the New York Mail Steamship Company in the exclusive occupation of or on the premises opposite Jackson square, in said city, known as the landing of said company, including all that portion of the landing on the Mississippi river, extending from the upper line of the space allotted and set apart for a ferry landing, opposite to St. Ann street, in the second district of the city of New Orleans, for a distance of 600 feet up stream, by a depth of 200 feet from the front line of the wharf, which premises were leased to the said company by the said city on the 8th day of July, 1865, as more fully set forth and described in the said petition, until the further order of our said court.

Witness, the honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, at the city of New Orleans, this 18th day of April, A. D. 1866.

(Signed) CHS. CLAIBORNE, *Clerk*,
[SEAL.] By F. B. VINOT, *D'y Clerk.*

18 *Marshal's return.*

Received April 18th, 1866, and same day, month, and year served a copy of this writ of injunction on the city of New Orleans, the defendant named herein, by leaving said writ in the hands of Geo. Clark, acting mayor of the city of New Orleans, at the office of said mayor, in the city-hall of this city.

Returned, New Orleans, April 18th, 1866.

(Signed) M. EGAN,
Deputy U. S. Marshal.

This document, with marshal's first return, received in the U. S. marshal's office May 18th, 1866, and on the same day, month, and year served a copy of this writ and the marshal's first return thereon, on John T. Monroe, mayor of the city of New Orleans, personally, at his office, in the city-hall, in this city.

New Orleans, May 19th, 1866.

(Signed) M. EGAN,
Deputy U. S. Marshal.

19 *Injunction, issued 18th April, 1866.*

UNITED STATES OF AMERICA:

Circuit court of the United States, sixth circuit and eastern district of Louisiana.

NEW YORK MAIL STEAMSHIP COMPANY
vs.
THE CITY OF NEW ORLEANS. } No. 3,852.

The President of the United States to the city of New Orleans, all their agents, employees, officers, and surveyor, and all contractors, and sub-contractors, greeting:

Whereas, it has been represented to us in our said circuit court, on the part of the New York Mail Steamship Company, by their petition lately exhibited against you, to be relieved touching and concerning certain matters and things in said petition contained; now, therefore, in consideration of the premises and of the allegations in said petition contained, you, the city of New Orleans, your
20 agents and attorneys, and each of you, are hereby commanded and strictly enjoined, under the penalty of the law, that you absolutely refrain and desist from removing the enclosures, buildings, shades, or wharves, or any part thereof, and from in any way interfering with the same, or any part thereof, of from in any way interfering with or disturbing the New York Mail Steamship Company in the exclusive occupation of, or on the premises opposite Jackson square, in said city, known as the landing of said company, including all that portion of the landing on the Mississippi river, extending from the upper line of the space allotted and set apart for a ferry landing, opposite to St. Ann street, in the second district of the city of New Orleans, for a distance of 600 feet up stream, by a depth of 200 feet from the front line of the wharf, which premises were leased to the said company by the said city, on the 8th day of July, 1865, as more fully set forth and described in the said petition, until the further order of our said court.

Witness, the honorable Salmon P. Chase, Chief Justice of
21 the Supreme Court of the United States, at the city of New Orleans, this 18th day of April, A. D. 1866.

(Signed) CHS. CLAIBORNE, *Clerk*,
[SEAL.] By F. B. VINOT, *D'y Clerk*.

Marshal's return.

Received April 18th, 1866, and forthwith proceeded to the New York Mail Steamship Company's landing, in front of Jackson square, in this city, for the purpose of serving this writ on the employee of the city of New Orleans, the defendant named herein, then supposed to be engaged in tearing down the wooden enclosure, the property of the plaintiffs in this suit, but found no laborer or officer of the said city at said place, as the whole enclosure was already torn down, the sheds, office, and a few of the piles of the fence alone left standing. Writ returned not served.

New Orleans, April 18th, 1866.

(Signed) J. J. PREIS,
D'y U. S. Marshal.

22 The President of the United States of America, to the marshal of the eastern district of Louisiana, greeting:

NEW YORK MAIL STEAMSHIP COMPANY
vs.
THE CITY OF NEW ORLEANS. } No. 3,852.

You are hereby commanded to summon The City of New Orleans, a political corporation domiciled in, and a citizen of the State of Louisiana, to comply with the demand of the New York Mail Steamship Company, a corporation incorporated under the laws of the State of New York, and domiciled in, and a citizen of the State of New York, contained in the petition of which a copy accompanies this citation, or to deliver its answer to the same, in the office of the clerk of the circuit court of the United States, sixth judicial circuit and eastern district of Louisiana, in the city of New Orleans, in ten days after the service hereof, or judgment will be rendered against it by default; which delay is increased one day for every ten miles the defendant's residence is distant from New Orleans, the place where the court is held. And that you make due return hereof on the first Monday of May, 1866.

Witness, the honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States of America, at the city of New Orleans, this 18th day of April, A. D., one thousand eight hundred and sixty-six, and of the independence of the United States the ninetieth year.

(Signed) CHS. CLAIBORNE, *Clerk*,
[SEAL.] By F. B. VINOT, *D'y Clerk*.

23 *Marshal's return.*

Received April 19th, 1866, and on the 19th day of April, 1866, served a copy of the within citation and plaintiff's petition for injunction accompanying the same, on the city of New Orleans, the defendants named herein, by leaving said documents in the hands of

Geo. Clark, esq., acting mayor of said city of New Orleans, personally at the office of said mayor in the city hall of this city.

(Signed) M. EGAN,
D'y U. S. Marshal.

New Orleans, April 20th, 1866.

24 *Answer of defendant.—Filed May 7th,* 1866.

Circuit court of the United States, for the sixth judicial circuit and eastern district of Louisiana.

NEW YORK MAIL STEAMSHIP COMPANY
vs.
THE CITY OF NEW ORLEANS.

The defendant, the city of New Orleans, now comes into court and for answer to the plaintiff's petition denies all and singular the allegations therein contained, and for further answer, your respondent denies the existence of any contract as in said petition pretended.

Respondent further avers, if any such contract exists, that the same is null, void, or of no effect, because it was not made by any person or persons authorized to bind the said city; because Hugh Kennedy, pretending to act as the mayor of the city of New Orleans, had no right or authority to bind, encumber, or alienate in any manner or way any part or portion of the real estate of said city,

25 or to part with, dispose of, or lease any of its rights or privileges; and that if the said Kennedy ever had any such rights, which is denied, they aver that the contracts made in pursuance thereto would be valid and binding only during the period of the administration of the said Kennedy, and would have ceased to have any force or effect, and would have become null and void from the moment that the municipal government of the city of New Orleans was restored to the municipal officers prescribed by, and elected under the charter of the said city, and laws of the State of Louisiana, to wit, on the day of , 1866.

Your respondent further denies that the said Hugh Kennedy, in his pretended capacity of mayor, or the said Hugh Kennedy, in his said capacity, and the bureaux of finance, and of streets and landings were ever vested with all of the rights or powers of the mayor, and of the boards of aldermen, and of assistant aldermen, as constituted under the charter of said city, or with the right, power, and authority to bind the said city in the form and manner set forth in said petition.

26 And your respondent, further avers, that even if they were so authorized and empowered, which is denied, the said contract would be null and void, and of no effect, because none of the formalities prescribed by law and the ordinances of the said city were ever complied with; there were no specifications, advertisements, offer to sell at auction, or adjudication, &c.

Your respondent further avers, that the premises pretended to be leased were appropriated for public use, and were hors de commerce

and not subject to contract. That the pretended contract and the inclosing and using the said premises, as therein specified, would deprive the public of the use of said premises, which is prohibited by law; that the enclosure, buildings, fences, &c. erected on said premises are nuisances which the law authorizes the municipal authorities to abate.

Your respondent further avers, that said Hugh Kennedy was not its agent, and that he has exceeded his power and authority, and that the city of New Orleans, is in no manner or way bound by his illegal and unauthorized acts or contracts, or liable or responsible for any damage which may arise therefrom.

27 Wherefore your respondent prays that the injunction issued in this case be set aside. Plaintiff's petition be dismissed with costs, and for all other and further relief as the nature of the case may admit of.

(Signed) BUCHANAN & GILMORE,
For Defendant.

Supplemental petition and order.—Filed May 7th, 1866.

United States circuit court, sixth circuit, eastern district of Louisiana.

NEW YORK MAIL STEAMSHIP COMPANY
vs.
THE CITY OF NEW ORLEANS.

To the honorable judges of the United States circuit court for the sixth judicial circuit and eastern district of Louisiana.

The supplemental petition of the New York Mail Steamship Company respectfully shows and states:

That the city of New Orleans, defendant herein, disregarding and in defiance of the writ of injunction issued by this honorable
28 court in this cause, has commenced, through its acting mayor and city attorney, an action in the third district court of New Orleans, and caused an injunction to be issued by said district court restraining and enjoining your petitioner from erecting, building, or constructing any fence, work, building, or enclosure on the landing, river-bank, and levee mentioned and described in the original petition filed herein.

That your petitioner is apprehensive that said city of New Orleans will cause other and further suits and proceedings to be commenced which shall vex, harrass, and disturb your petitioner in the use and occupation and enjoyment of said demised premises.

Wherefore your petitioner prays the annexed bond and affidavit considered that an order of injunction may be issued by this honorable court prohibiting and enjoining the said city of New Orleans, the mayor, and attorney thereof, and all its agents, employees, and officers from further prosecuting and proceeding in said action in said third district court of New Orleans, and from bringing or commencing any

other action or proceeding which shall interfere with said New
29 York Mail Steamship Company in the full, free, and exclusive use and enjoyment of the said demised premises, according to the provisions and terms of said lease, until the further order of this honorable court; and that petitioner have leave to file this supplemental petition, and that said city of New Orleans be cited to appear and answer this supplemental petition, and that after due proceedings had, that petitioner may have judgment that said order of injunction as above prayed for be made perpetual during the said term of ten years from the eighth day of July, 1865, and for all general and special relief in the premises just and equitable.

(Signed) SULLIVAN, BILLINGS, & HUGHES,
Of Counsel for Petitioners.

STATE OF LOUISIANA, *Parish of Orleans:*

J. M. Courtenay, being duly sworn, deposes and says that he is the attorney in fact of the New York Mail Steamship Company in the above supplemental petition named, and that all the allegations, and the facts stated in the foregoing petitition are true.

(Signed) J: M. COURTENAY.

30 Sworn to and subscribed before me this 7th day of May, 1866.

(Signed) F. B. VINOT, *D'y Clerk.*

Let this supplemental petition be filed, and let the injunction issue as prayed for on plaintiff giving bond in the sum of five thousand dollars, with good and solvent security, conditioned as the law directs.

New Orleans, 7th May, 1866.

(Signed) E. H. DURELL, *Judge.*

31 *Bond for injunction.—Filed May* 7, 1866.

32 Know all men by these presents, that we, The New York Mail Steamship Company, by J. M. Courtenay, attorney in fact, as principal, and A. S. Mansfield, as surety, are held and firmly bound, jointly and severally, unto the city of New Orleans, in the sum of five thousand dollars, lawful money of the United States of America, to be paid to the said city of New Orleans, and assigns, for which payment well and truly to be made, we bind ourselves, and each of us by himself, and each of our heirs, executors and administrators, firmly by these presents, sealed with our seals, and dated the seventh day of May, in the year of our Lord eighteen hundred and sixty-six.

Whereas, The New York Mail Steamship Company has this day presented a supplemental petition to the honorable the circuit court of the United States for the 6th circuit holding sessions in and for the eastern district of Louisiana, praying for a writ of injunction for the purposes therein set forth,

Now the condition of the above obligation is, that we, the above bounden, The New York Mail S. S. Company and A. S. Mansfield, will well and truly pay, to the said city of New Orleans, the defendant in

said injunction, all such damages as it may recover against us in case it should be decided that the said injunction was wrongfully obtained.

(Signed) J. M. COURTENAY. [L. S.]
(Signed) A. S. MANSFIELD. [L. S.]

Signed, sealed and delivered in the presence of—
(Signed) F. B. VINOT.

Filed May 7th, 1866.

Injunction, issued May 7th, 1866.

33 UNITED STATES OF AMERICA:

NEW YORK MAIL STEAMSHIP COMPANY
vs.
THE CITY OF NEW ORLEANS. } No. 3,852.

Circuit Court of the United States, sixth circuit and eastern district of Louisiana.

The President of the United States to the city of New Orleans, the mayor and attorney thereof, and all its agents, employes and officers, greeting:

Whereas, it has been represented to us in our said circuit court, on the part of the New York Mail Steamship Company, by their supplemental petition lately exhibited against you, to be relieved touching and concerning certain matters and things in said supplemental petition contained, now, therefore, in consideration of the premises, and of the allegations in said petition contained, you, the city of New Orleans, the mayor and attorneys thereof, and all its agents,
34 employes, and officers, and each of you are hereby commanded and strictly enjoined, under the penalty of the law, that you absolutely refrain and desist from further prosecution and proceeding in an action instituted by the city of New Orleans, in the third district court of New Orleans, against the said New York Mail Steamship Company, and from bringing or commencing any other action or proceeding which shall interfere with said New York Mail Steamship Company in the full, free, and exclusive use and enjoyment of the said demised premises, according to the provisions and terms of said lease, until the further order of this honorable court.

Witness, the honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States at the city of New Orleans, this 7th day of May, A. D. 1866.

(Signed) CHARLES CLAIBORNE, *Clerk.*
[SEAL.] By F. B. VINOT, *D'y Clerk.*

Marshal's return.

35 Received May 8th, 1866, and on the same day, month, and year, served a copy of the within injunction on George Clark,

acting mayor of the city of New Orleans, personally, at his office in the city hall in this city.

New Orleans, May 10th, 1866.

(Signed) M. EGAN,
Deputy U. S. Marshal.

This document, with the U. S. marshal's 1st return thereon, received in the U. S. marshal's office, May 18th, 1866, and on the same day, month, and year, served a copy of this writ, with the marshal's 1st return thereon, on Jno. T. Monroe, mayor of the city of New Orleans, personally, at his office in the city hall in this city.

New Orleans, May 19, 1866.

(Signed) M. EGAN,
Deputy U. S. Marshal.

Citation to supplemental petition.

The President of the United States of America to the marshal of the eastern district of Louisiana, greeting:

36 NEW YORK MAIL STEAMSHIP COMPANY, *vs.* CITY OF NEW ORLEANS. } No. 3,852.

You are hereby commanded to summon the city of New Orleans to comply with the demand of the New York Mail Steamship Company, contained in the supplemental petition, of which a copy accompanies this citation, or to deliver its answer to the same, in the office of the clerk of the circuit court of the United States, sixth judicial circuit and eastern district of Louisiana, in the city of New Orleans, in ten days after the service hereof, or judgment will be rendered against it by default, which delay is increased one day for every ten miles the defendant's residence is distant from New Orleans, the place where the court is held, and that you make due return hereof on the first Monday of June, 1866.

Witness, the honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States of America, at the city of
37 New Orleans, this 7th day of May, A. D. one thousand eight hundred and sixty-six, and of the independence of the United States of America the ninetieth year.

(Signed) CH'S CLAIBORNE, *Clk.*,
[SEAL.] By F. B. VINOT, *D'y Clerk.*

Marshal's return.

Received May 8th, 1866, and on the same day, month, and year, served a copy of the within citation and supplemental petition accompanying the same, on Geo. Clark, acting mayor of the city of New Orleans, personally, at his office in the city hall in this city.

New Orleans, May 10th, 1866.

(Signed) M. EGAN,
Deputy U. S. Marshal.

Rule taken by plaintiff, from minutes of May 7th, 1866.

38 NEW YORK MAIL STEAMSHIP CO'Y
vs.
THE CITY OF NEW ORLEANS. } No. 3,852.

Circuit court of the United States, sixth circuit and eastern district of Louisiana, April term, 1866.

NEW ORLEANS, *Monday, May 7th*, 1866.

Court met pursuant to adjournment. Present, the honorable E. H. Durell, dist. judge.

On motion of Sullivan, Billings & Hughes, attorneys for the plaintiff, and upon the suggestion that a writ of injunction on the 18th day of April, 1866, issued in this cause by the court, whereby the defendants, their agents, officers, and attorneys were enjoined and prohibited from certain acts, but that in violation of said writ of injunction, the defendants, and specially the Hon. George Clark, acting mayor has caused an action to be commenced in behalf of the defendants against the plaintiff, in the third district court of New Orleans, and has in the said suit obtained a writ of injunction against the plaintiff, which is in violation of the writ of injunction in this court obtained as above set forth.

39 It is ordered that the defendants herein, and said George Clark, acting mayor of said city, cause said suit to be discontinued, and said writ of injunction in said third district court be vacated, or show cause before this court at 11 o'clock a. m. on Saturday, the 12th day of May, eighteen hundred and sixty-six, why they should not be punished for a contempt, and why plaintiff should not have all other relief which may be equitable and just in the premises.

Marshal's return.

Received May 8th, 1866, and on the 8th day of same month, and year, served a copy of the within rule on Geo. Clark, acting mayor of the city of New Orleans, personally, at his office in the city hall in this city.

New Orleans, May 10th, 1866.

(Signed) M. EGAN,
Deputy U. S. Marshal.

Answer of Geo. Clarke acting mayor to rule for contempt, filed May 12th, 1866.

40 NEW YORK MAIL STEAMSHIP COMP'Y
vs.
THE CITY OF NEW ORLEANS. }

George Clark, acting mayor of the city of New Orleans, for answer to the rule herein served upon him to show cause why he should not be punished for contempt of an alleged violation of the writ of injunc-

tion issued in this cause, says that he has done or performed no act in violation of the said writ of injunction, and that he has never intended any violation thereof, or intended in any manner to treat with disrespect the authority of this honorable court, on the contrary, this respondent respectfully submits that from the moment the said writ was served neither he nor any one acting under his authority have intended or attempted to violate the said injunction.

And further answering, respondent says, that at the time of the service of said writ, a fence which had enclosed the premises described in the plaintiffs petition had been removed; that your res-
41 pondent was advised that the effect of the said writ of injunction was to preserve the property in the state and condition in which it was at the time of the service of said writ; that neither the plaintiff nor defendant had the right to make any change or alteration in the condition of the premises; but this respondent says, that being credibly informed and believing that the said plaintiffs were, in violation of their legal obligations arising from the said injunction, preparing materials, and engaging workmen, with a view of changing a new fence around the same during the night of Saturday and Sunday, at a time when no process to restrain them could be issued from any court, your respondent, not with a view of treating with contempt the mandate of this honorable court, or of violating its authority, but on the contrary, with a view to maintain what he considered to be the object and effect of the injunction issued in this cause, applied for and obtained from the 3d district court of New Orleans the injunction complained of.

Wherefore, disclaiming the intention imputed to him of treating with contempt the authority of this honorable court, he submits
42 himself to such judgment as the hon'ble court may render in the premises.

(Signed) GEORGE CLARKE,
Mayor pro tem.

Sworn to and subscribed before me this 12th day of May, 1866.
(Signed) CHS. CLAIBORNE, *Clerk.*

Minute of evidence, filed May 12th, 1866.

NEW YORK MAIL STEAMSHIP CO.
vs.
THE CITY OF NEW ORLEANS.

Plaintiff offered in evidence certified copy of petition institnted in the case No. 21,259, city of New Orleans, *vs.* New York Mail Steamship Company instituted in the 3d district court of New Orleans.

And also the injunction annexed to said petition.

43 *Document offered in evidence, and filed May 12th, 1866.*

To the honorable the judge of the third district court of New Orleans:

The petition of the mayor, aldermen, and citizens of the city of New Orleans respectfully shows that they are informed and have good reason to believe, and do believe, that the New York Mail Steamship Company, describing itself as a corporation incorporated under the laws of the State of New York, and domiciled in said State of New York, and represented in this State by their attorney in fact, J. M. Courtnay, who resides in New Orleans, and the said J. M. Courtney are now preparing materials, employing labor, and contracting for the purpose of building and enclosing with a fence or other works a portion of the landing, river bank, and levee of the city of New Orleans, viz: from the upper line of the space now allotted and set apart for a ferry landing opposite St. Anne street, in the
44 second district, for a distance of six hundred feet up stream by a depth of two hundred feet from the front line of the wharf.

Your petitioners further show that the whole of the above-described portion of landing, river bank, and levee is dedicated to the public use, and that the erection of any work, building, or the fencing in or enclosing of the same, or any part thereof, would tend to obstruct a place, of which the public has the use, and that the said New York Mail Steamship Company, and its said attorney in fact, J. M. Cortenay, are about to, and unless prevented by an order from this honorable court, will so obstruct the public use.

Your petitioners represents that by the act of the legislature of 1852, they are dispensed from furnishing bond and security, and that by reason of the annexed affidavit, they are entitled to a writ of injunction.

Wherefore, your petitioners pray that the premises considered, a writ of injunction may be duly issued from this honorable court, prohibiting and enjoining the said New York Mail Steamship
45 Company and the said J. M. Courtenay from erecting, building, and constructing any fence, work, building, or enclosure on the above-described portion of the landing, river bank, and levee, or any part thereof; and your petitioners further pray that the said New York Mail Steamship Company, through its attorney in fact, J. M. Courtenay, and the said J. M. Courtenay, be duly cited to appear and answer this petition, and that after due proceedings that there be judgment in favor of your petitioners and against the said defendants, and that the said injunction be made perpetual; and your petitioners pray for all other and further relief as the nature of the case may admit of.

(Signed) H. OGDEN, *City Attorney.*

George Clark, mayor pro tem. of the city of New Orleans, being duly sworn, deposes and says that all the facts and allegations in the foregoing petition are true.

(Signed) GEORGE CLARKE,
Mayor pro tem.

Sworn to and subscribed before me this the 21 day of April, 1866.
(Signed) SAMUEL MYERS,
2 *Justice of the Peace, Parish of Orleans.*

46 *Order.*

Let a writ of injunction issue herein as prayed for according to law, prohibiting the N. York Mail St'ship Company and J. M. Courtenay from erecting, building, or constructing any fence, work, building, or enclosure on the property described in plaintiff's petition.
New Orleans, April 21st, 1865.
(Signed) E. T. FELLOWES, *Judge.*

CLERK'S OFFICE, *April 23d*, 1866.

A true copy.
(Signed) J. A. WOOLFLEY, *Clerk.* [SEAL.]

Document annexed to petition, offered by plaintiff, and filed in evidence May 12th, 1866.

CITY OF NEW ORLEANS
vs.
THE N. YORK MAIL S. S. COMPANY. } No. 21,259.

STATE OF LOUISIANA,
Third District Court of New Orleans:

To the New York Mail Steamship Company and J. M. Courtenay, its att'y in fact:

You are hereby commanded, enjoined, and restrained, in the
47 name of the State of Louisiana and of the third district court of New Orleans, from erecting, building, or constructing any fence, work, building, or enclosure, or other work on that portion of the landing, river bank, and levee of the city of New Orleans, viz: from the upper line of the space now allotted and set apart for a ferry landing, opposite St. Ann street, in the second district, for a distance of six hundred feet up stream, by a depth of two hundred feet from the front line of the wharf, and you are so commanded, enjoined, and restrained until the further order of this court.

Witness, the honorable E. T. Fellowes, judge of our said court, at the city of New Orleans, this 21st day of April, in the year of our Lord eighteen hundred and sixty-six, and in the 90th year of the independence of the United States.
Signed) J. O. CHALON, *D'y Clerk.*

Hearing and continuance of rule, from the minutes of May 12th, 1866.

48 NEW YORK MAIL STEAMSHIP COMPANY
vs.
THE CITY OF NEW ORLEANS. } No. 3,852.

The rule taken by plaintiff on the 7th instant came up for trial Sullivan, Billings, and Hughes, for plaintiffs; Buchanan and Gilmore, for defendants in rule.

When, after hearing the pleadings, evidence, and argument, it is ordered that the rule be continued till Monday, 14th instant, at 11 a. m.

Order continuance of rule, from the minutes of May 14, 1866.

THE NEW YORK MAIL STEAMSHIP COMPANY
vs.
THE CITY OF NEW ORLEANS. } No. 3,852.

The rule continued from Saturday last was called up, and upon defendant's application, ordered to be continued until Thursday next, 17 inst., at 11 a. m.

49 *Rule taken by defendants, from the minutes of May 14th,* 1866.

NEW YORK MAIL STEAMSHIP COMPANY
vs.
THE CITY OF NEW ORLEANS. } No. 3,852.

On motion of Buchanan and Gilmore, of counsel for defendant, it is ordered that the plaintiff show cause, on Thursday, the 17th instant, at 11 o'clock a. m., why the injunction herein issued, on the 18th ultimo, should not be restrained during the pendency of this suit from erecting fencing, sheds, or other obstructions upon the premises described in the petition upon the grounds: 1st. That the locus in quo is part of the public landing or quay, of which the public have the use, and from which the public cannot be excluded, and is not susceptible of exclusive private use and enjoyment, and that any pretended contract, purporting to confer such right, is in derogation of the public right, and is absolutely null and void. 2d. That the plff. petition shows no cause of action.

And it is further ordered that the said plaintiff show cause at same time why the second writ of injunction herein issued, on the 7th instant, should not be set aside upon the ground that the same issued improvidently, and for the reasons above stated.

50 *Marshal's return.*

Received May 15th, 1866, and same day, month, and year served a copy of the within rule on Sullivan, Billings, and Hughes, esq'rs. attorneys for plaintiff, in the within suit, by leaving said documents in the hands of J. P. Sullivan, esq'r, one of said attorneys, personally, at the office of the U. S. marshal in this city.

New Orleans, May 15th, 1866.

(Signed) J. J. PRIES,
Deputy U. S. Marshal.

Order continuance of rules and case on its merits, from the minutes of May 17, 1866.

NEW YORK MAIL STEAMSHIP COMPANY
vs.
THE CITY OF NEW ORLEANS. } No. 3,582.

By consent of counsel in open court, it is ordered that the rules, as well as the case on its merits, be tried on Saturday, 26 instant, at 11 o'clock a. m.

51 *Supplemental and amended answer tending rent notes, filed May, 24th, 1866.*

NEW YORK MAIL STEAMSHIP COMPANY
vs.
THE CITY OF NEW ORLEANS. } No. 3,852.

In the circuit court of the United States for the sixth circuit and eastern district of Louisiana.

Now, into this court comes the defendant, the city of New Orleans, and with leave of the court, first had and obtained, files this supplemental and amended answer in the above-entitled suit.

And respondent repeating the pleas herein before made, says that the defendant is entitled to have the pretended lease made to plaintiff of a portion of the landing, by act before Andrew Hero, of date the 8th July, 1865, cancelled, annulled, and rescinded; and that respondent herewith files and tenders to plaintiffs their monthly rent notes, one hundred and eleven in number, for $666 66 each,
52 numbered 10 to 120 inclusive, and paraphed by the notary to identify them with the act of lease.

Wherefore respondent prays, that the said rent notes thus tendered to plaintiffs be deemed their property and at their risk, and that they be condemned to deliver up to respondent the premises leased, and for general relief.

(Signed) BUCHANAN & GILMORE
For Defendant.

Let this supplemental and amended answer be filed.
May 24, 1866.
(Signed) E. H. DURELL, *Judge.*

The 111 notes herein mentioned have been given to the clerk, and filed under date of May 24th, 1866.

53 *Order continuance of rules of cause, from the minutes of May 26th, 1866.*

NEW YORK MAIL STEAMSHIP COMPANY
vs.
THE CITY OF NEW ORLEANS. } No. 3,852.

For want of time it is ordered by the court that the rules pending in this case, as well as the cause on its merits be continued until Wednesday next, 30th instant, at 11 a. m.

Note of evidence, filed May 30th, 1866.

N. Y. MAIL S'SHIP COMPANY
vs.
THE CITY OF NEW ORLEANS.

Def't offered in evidence the answer of Geo. Clark. Doc't "B.," resolution.

L. H. Pilie sworn for defendant.

Plaintiff offered in evidence notarial act, marked "C." (See page 6.)

54 Defendant offered plan "D."

Plaintiff offered note "E," and doc'ts F, G, H, I, K, L, M.

H. Clovenee sworn for plaintiff:

Def'd't offered ordinance, appearing in the Picayune, 29th June, 1862, marked "N."

Wm. Thield, Mr. Crawford, Crawford, jr., sworn for plaintiff:

Plaintiff offered plan "O."

I. A. D. Hemecourt and I. A. Lusk sworn for defendant.

Document "B," offered by def't, May 30th, 1866.

No. 13.—New. series.

MAYORALTY OF NEW ORLEANS,
City Hall, 16th, day of April, 1866.

Whereas, the municipal authorities are bound to preserve unobstructed for public use the streets of this city and the banks of the river which are public places; and whereas certain steam-
55 ship and steamboat companies, and other persons, have lately caused to be enclosed certain portions of the bank of the river, and erected thereon certain buildings; be it therefore—

Resolved, That the city surveyor be, and he is, hereby authorized and directed to cause to be removed immediately, all fences, buildings, etc., and other obstructions found on the levee in front of the city.

(Signed) WM. McCULLOGH,
President of Board of Ass't Aldermen.

(Signed) GEO. CLARKE,
President pro tem. Board of Aldermen.

Approved: April 12th, 1866.

(Signed) GEO. CLARK
Mayor pro tem.

(Signed) JNO. OVERALL, [SEAL.]
Private Secretary.

A true copy:

(Signed) THEO. MARKS.

[Here follows map marked page 56.]

57 *S of F.—Exhibit K.—document "E."—(Note.)*

$666 66⅔. NEW ORLEANS, *8th July*, 1865.

On the 8th of April, 1866, after date, N. Y. Mail Steamship Co., promise to pay to the order of the treasurer of the city of New Orleans, at the office of said treasurer, six hundred and sixty-six 66⅔ dollars, value received in rent.

(Signed) J. M. COURTENAY,
Agent N. Y. M. S. S. Co.

No. 9.—Paraphed Ne varietur, New Orleans, July 8th, 1865.
(Signed) ANDREW HERO, *Not. Pub.*

Endorsed:
FRANCIS MOUNEY,
Ass't Treasurer.

Document "F."

General Orders, No. 6.

STATE OF LOUISIANA,
Executive Department, New Orleans, January 30, 1863.

I. Colonel Henry C. Deming is, at his own request, hereby
58 relieved from duty as acting mayor of New Orleans.

II. Captain James F. Miller, A. A. G., is hereby appointed provisional acting mayor of New Orleans, and will be obeyed and respected accordingly.

(Signed) G. F. SHEPLEY,
Brig. Gen'l U. S. Vol's, Military Governor of Louisiana.

Official copy:
(Signed) DE WITT CLINTON,
Brevet Lt. Colonel, Judge Advocate.

Document "G."

General Orders, No. 11.

STATE OF LOUISIANA,
Executive Department, New Orleans, Oct. 1*st*, 1865.

Part 1. Brigadier General Godfrey Weitzel having been assigned to the command of the Reserve Brigade, department of the Gulf, is, at his own request, hereby relieved from duty as assistant military commandant and acting mayor of New Orleans.

II. Colonel Henry C. Deming, 12th regiment, Connecticut volunteers, is hereby appointed acting mayor of New Orleans, and will be obeyed and respected accordingly.

59 By order of Brig. General G. F. Shepley, military governor of Louisiana.

(Signed) JAMES P. MILLER,
Ass't Adj't Gen'l.

Official copy:
(Signed) DE WITT CLINTON,
Brevet Lieut. Colonel, Judge Advocate.

Document "H."

General Orders, No. 24.

HEADQUARTERS, DEPARTMENT OF THE GULF,
New Orleans, May 10th, 1862.

Acting Brig. Gen. George F. Shepley, colonel 12th Maine volunteers, is hereby appointed military commandant of New Orleans. All officers on duty in this city or in Algiers, except officers of the division staff, will report to him.

By command of Major General Butler.

GEO. C. STRONG,
Assistant Adjutant General.

Official copy:

DE WIT CLINTON,
Brevet Lieutenant Colonel, Judge Advocate.

60 *Document "I."*

Special Orders, No. 119.

HEADQUARTERS, DEPARTMENT OF THE GULF,
New Orleans, May 5th, 1866.

(Extract.)

5. Colonel Samuel M. Quincy, 73d U. S. colored infantry, is relieved from his present duties, and is hereby assigned to the duty of acting mayor of the city of New Orleans.

Upon the receipt of this order, he will proceed to the city hall and assume the duties of that office. The present acting mayor is directed to surrender to him all the papers connected with that office.

By command of Major General Banks.

J. C. STONE,
Captain and Assistant Adj't General.

Official:

(Signed) NATHANIEL BURBANK,
1st Lieut. and Acting Assistant Adj't General.

Document "K."

Special Orders, No. 152.

61 HEADQUARTERS, DEPARTMENT OF THE GULF,
New Orleans, June 8th, 1865.

(Extract.)

Pat. 17. Mr. Hugh Kennedy is appointed acting mayor of the city of New Orleans.

Colonel Samuel M. Quincy, 73d U. S. colored infantry, is relieved from duty as acting mayor, and will rejoin his regiment He will

turn over to Mr. G. Burke, who is authorized to act until the arrival of the acting mayor, the duties of the office in which he is now acting.

By order of Major General E. R. S. Canby.

(Signed) C. H. DYER,
Ass't Adj't General.

Official copy:

(Signed) DE WITT CLINTON,
B'v't L't Col. and Judge Advocate.

62 *Document "L."*

General Orders, No. 26.

HEADQUARTERS, DEPARTMENT OF LOUISIANA,
New Orleans, La., March 18, 1866.

Upon the qualification and inauguration of the municipal officers who may have been elected under the law of the State of Louisiana, passed on the 13th day of February, 1866, and the governor's proclamation of March 6, 1866, the military order of May 20, 1862, creating the present municipal government of the city of New Orleans, and any subsequent military orders enlarging, limiting, or otherwise modifying the powers, duties, and obligations of the said municipal officers will be vacated from and after twelve o'clock m., of Monday the 19th day of March, 1866, as above cited, provided that this order shall not be construed as affecting or determining any question of public or private rights, or as impairing in any decree the obligations of any contract created or entered into by the present municipal authorities under and in conformity with the powers delegated to them by competent military authority.

If any of the persons elected, or claiming to be elected to municipal offices under the authority of the law and proclamation
63 above cited, and disqualified by reason of being excepted from the benefits of the President's proclamation of May 29, 1865, that fact will be determined by the commander of this department, or other superior military authority, and such persons will not be permitted to exercise the functions of the officers to which they have been elected, or may claim to have been elected until the disability has been removed by the President, or he has otherwise passed upon the case or cases of the person or persons so disqualified. In cases of disqualification under the laws of the State of Louisiana, the facts must be determined by the laws of that State, and by ordinary procedure in the courts of justice.

By order of Major General E. R. S. Canby.

WILLIAM HOFFMAN,
Assistant Adjutant General.

Official:

(Signed) NATHANIEL BURBANK,
Acting Assistant Adjutant General.

Document "M."

Special Orders, No. 110.—*Par.* 5.

HEADQUARTERS, DEPARTMENT OF LOUISIANA,
64 NEW ORLEANS, LA., *November 9th*, 1865.

Under the authority of instructions from the War Department Colonel S. B. Holabird, chief quartermaster department of Louisiana, is appointed a member of the joint commission for the purpose of selecting such portions of the wharf and levee space in the port of New Orleans as may be required for the purposes of the War, Navy, and Treasury Departments.

The commission will consist of Acting Rear Admiral H. K. Thatcher, U. S. Navy, appointed by the Secretary of the Navy; Hon. William P. Kellogg, collector of the port of New Orleans, appointed by the Secretary of the Treasury; Col. S. P. Holabird, additional aid-de-camp, U. S. army and chief quartermaster department of Louisiana; First Lieutenant H. W. Wheeler, 81st U. S. colored infantry, is appointed recorder of the commission.

The acting mayor of New Orleans is requested to invite the
65 city surveyor to attend the sessions of the commission in order to give such information in the interests of the city as may be desired.

The commission will determine its own hours and place of setting and the quartermasters department will furnish a room for the office purposes of the commission.

By order of Major General E. R. S. Canby.

(Signed) WICKHAM HOFFMAN,
Assistant Adjutant General.

Official:

(Signed) NATHANIEL BURBANK,
1*st Lieut. and Acting Ass't Ad'jt General.*

Document N.—Notice.

eral Order, No. 17.

HEADQUARTERS MILITARY COMMANDANT OF NEW ORLEANS,
CITY HALL, *June* 27, 1862.

he legislative power of the city of New Orleans has heretofore n vested by law in a board of aldermen and a board of assistant aldrman, who together formed the common council of the city. Th power is now suspended. The seats of the aldermen and assistan alderman—(This reference approved. F. B. Vinot, d'y cl'k.)—hav all been vacated, one class of them by the expiration of their term of office and the remainder by their neglect to take the
66 oath of allegiance to the United States as required by general order No. 41 of the commanding general of this department.

Believing that the inconvenience incident to a temporary suspension of legislative power will be slight compared with the evils which

have heretofore been consequent on excessive and frequently corrupt legislation, these vacancies will not be filled until such time as there shall be a sufficient number of the citizens of New Orleans loyal to their country and their Constitution to entitle them to resume the rights of self government.

So much of the executive power of the city as has heretofore been vested in the mayor will, for the present, be exercised by the military commandant of New Orleans.

A bureau of finance is hereby constituted, composed of a board of three persons, one of whom shall be the chairman of the board, to be appointed by the military commandant, with such clerks as may from time to time be found necessary, and may be appointed by the chairman of the board, subject to the approval of the military
67 commandant. The duties of said bureau shall be the same as those which, under the act approved March 30th, 1856, and under other laws constituting the charter of the city of New Orleans, and under the ordinance of said city now in force, have been attributed to the several committees on finance, police, fire, judiciary, claims, education, and health in the board of aldermen and in the board of assistant aldermen of the common council of New Orleans. The office of the said bureau shall be in the city hall.

A "bureau of streets and landings," consisting of three persons, one of whom shall be chairmen, is hereby constituted. The duties of said bureau shall be the same which, under the charters, laws, and ordinances of the city of New Orleans, have appertain to the several committees on streets and landings, workhouse and prisons and house of refuge in the board of aldermen and board of assistant aldermen. The office of said bureau shall be in the city hall and the chairman shall appoint, subject to the approval of the military commandant.
68 the necessary clerks, whose compensation will be fixed by t bureau, subject to the same approval.

The following named persons will constitute the bureau of fin E. H. Durell, chairman; D. S. Hughes, Stoddard Howell.

The following named persons will constitute the bureau of st and landings: Julian Neville, chairman; Edward Ames, Benj Campbell.

By order of—

G. F. SHEPPLEY,
Military Commandant of New Orlean

Approved and ordered:

B. F. BUTLER,
Major General Commanding Department of the Gulf.

Published in the New Orleans Picayune of June 29th, July 1st, and July 2d, 1862.

[Here follows map marked page 68.]

Order continuance of rules and cause, from the minutes of May 30th, 1866.

69 NEW YORK MAIL S. S. CO. vs. THE CITY OF NEW ORLEANS. } No. 3,852.

This cause came up for trial on the rules and merits. Sullivan, Billings & Hughes for plaintiff, Buchanan & Gilkmore for defendant. When, after hearing the pleadings and evidence—

It is ordered, that the same be continued till to-morrow, 31st inst., at 11 a. m., and that the defendant then and there produce in court the book containing the ordinances issued by the bureau of streets and landings, from the 1st July, 1862, up to the time said bureau ceased to exist.

Exception and Plea, filed May 30th, 1866.

NEW YORK MAIL S. S. COMPANY vs. CITY OF NEW ORLEANS. } No. 3,852.

70 Into the honorable circuit court of the United States for the sixth circuit and eastern district of Louisiana comes the defendant by counsel and pleads for declinatory exception to the supplemental petition of plaintiff herein and to the writ of injunction issued upon the said supplemental petition: that this court is without jurisdiction to enjoin the institution or the prosecution of a suit in a State court, wherefore defendant prays that the injunction herein issued on the 7th May, 1866, on the supplemental petition of plaintiff in the above entitled suit be dissolved at plaintiff's costs, and for general relief.

(Signed.) BUCHANAN & GILLMORE,
Att'ys for Defendant.

Subpoena duces tecum, issued May 30th, 1866.

Circuit court of the United States for the sixth judicial circuit and eastern district of Louisiana.

The President of the United States to John T. Monroe, mayor,
71 the city of New Orleans defendant:

You are hereby commanded to produce the books containing the ordinances issued by the bureau of streets and landings from the 1st July, 1862, up to the time said bureau ceased to exist, before the circuit court of the United States for the 6th circuit in and for the said district, to be holden at the city of New Orleans on the 31st day of May, 1866, then and there to be used in evidence in a certain cause now depending therein and to be tried between the New York Mail Steamship Company and the City of New Orleans, at 11 o'clock, a.

m., and therein fail not under the penalty of two hundred and fifty dollars.

Witness, the honorable Salmon P. Chase, chief justice of the Supreme Court of the United States, at the city of New Orleans, this 30th day of May, in the year of our Lord one thousand eight hundred and sixty-six and in the 90th year of American independence.

(Signed.) CHAS. CLAIBORNE, *Clerk*,
[SEAL.] B. F. B. VINOT, *D'y Clerk*.

72 *Marshal's return.*

Received May 31st, 9½ a. m., and on the same day, month, and year, forthwith served a copy of the within subpœna duces tecum, on Jno. T. Monroe, mayor of New Orleans, personally, at his office in the city hall of this city.

New Orleans, May 31st, 1866.

(Signed) M. EGAN,
D'y U. S. Marshal.

Order continuance, from the minutes of May 31, 1866.

NEW YORK MAIL STEAMSHIP COMPANY
vs.
THE CITY OF NEW ORLEANS. } No. 3,852.

For want of time ordered that the cause be continued until Saturday next, at 11 a. m.

73 *Subpœna duces tecum, issued June 5th,* 1866.

74 Circuit court of the United States for the 6th judicial circuit and eastern district of Louisiana.

The President of the United States to John T. Monroe, mayor of the city of New Orleans, defendant:

You are hereby commanded to produce the book containing the ordinances issued by the bureau of streets and landings from the 1st July, 1862, up to the time said bureau ceased to exist, before the circuit court of the United States for the 6th circuit in and for the said district, to be holden at the city of New Orleans on the 5th day of June, 1866, then and there to be used in evidence in a certain cause now depending therein, and to be tried between the New York M. S. S. Company and the city of New Orleans, at 11 o'clock a. m., and herein fail not under the penalty of two hundred and fifty dollars.

Witness, the honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, at the city of New Orleans, this 4th day of June, in the year of our Lord one thousand eight hundred and sixty-six, and in the 90th year of American independence.

(Signed) CHAS. CLAIBORNE, *Clerk*.
By F. B. VINOT, *D'y Clerk*.

75 *Marshal's return.*

Received June 5th, 1866, and same day forthwith served a copy of the within subpœna duces tecum on Jno. T. Monroe, mayor of the city of New Orleans, personally, at the city hall in this city.

(Signed) J. J. PREIS,
D'y U. S. Marshal.

New Orleans, June 5th, 1866.

76 *Order continuance, from the minutes of June 2d, 1866.*

NEW YORK MAIL STEAMSHIP CO.
vs.
THE CITY OF NEW ORLEANS. } No. 3,852.

For want of time ordered that this cause be continued until Tuesday next, 5 instant, at 11 a. m.

Motion and order for subpœna duces tecum, from the minutes of June 8, 1866.

NEW YORK MAIL STEAMSHIP CO.
vs.
THE CITY OF NEW ORLEANS. } No. 3,852.

On motion of Sullivan, Billings & Hughes, of counsel for plaintiff, it is ordered that the clerk of the court be authorized to issue a subpœna duces tecum addressed to Pasedlis Labarre, secretary of the committee of streets and landings, commanding him to produce on the trial of this action the correspondence and docu-
77 ments which have passed between the bureaus, established by General Sheppley, and the commanders of this department from August, 1862, to April, 1866.

78 *Subpœna duces tecum.*

Circuit court of the United States for the 6th judicial circuit and eastern district of Louisiana.

The President of the United States to John T. Monroe, mayor of the city of New Orleans, defendant:

You are hereby commanded to produce the book containing the ordinances issued by the bureau of streets and landings from the 1st July, 1863, up to the time said bureau ceased to exist, before the circuit court of the United States for the 6th circuit in and for the said district, to be holden at the city of New Orleans on the 11th day of June, 1866, then and there to be used in evidence in a certain cause now depending therein, and to be tried between the New York M. S. S. Comp'y and the city of New Orleans, at 11 o'clock a. m.; and herein fail not under the penalty of two hundred and fifty dollars.

Witness, the honorable Salmon P. Chase, Chief Justice of the Su-

preme Court of the United States, at the city of New Orleans, this 8th day of June, in the year of our Lord one thousand eight hundred and sixty-six, and in the 90th year of American independence.

(Signed) CHS. CLAIBORNE, *Clerk*,
[SEAL.] By F. B. VINOT, *D'y Clerk*.

79 *Marshal's return.*

Received June 8th, 1866, and on the 9th day of June, 1866, served a copy of the within subpœna duces tecum on Jno. T. Monroe, mayor of the city of New Orleans, at his office in the city hall of this city.

(Signed) M. EGAN,
D'y U. S. Marshal.

New Orleans, June 9th, 1866.

80 *Subpœna duces tecum.*

Circuit court of the United States for the 6th judicial circuit and eastern district of Louisiana.

The President of the United States to Pasedlis Labarre, secretary of the committee of streets and landings:

You are hereby commanded to produce the correspondence and documents which have passed between the bureaus established by General Sheppley and the commanders of this department from August, 1862, to April, 1866, before the circuit court of the United States for the 6th circuit in and for the said district, to be holden at the city of New Orleans on the 11th day of June, 1866, then and there to be used in evidence in a certain cause now depending therein, and to be tried between the New York Mail S. S. Co. and the city of New Orleans, at 11 o'clock a. m.; and herein fail not under the penalty of two hundred and fifty dollars.

Witness, the honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, at the city of New Orleans, this 8th day of June, in the year of our Lord one thousand eight hundred and sixty-six, and in the 90th year of American independence.

(Signed) CHS. CLAIBORNE, *Clerk*,
[SEAL.] By B. F. VINOT, *D'y Clerk*.

81 *Marshal's return.*

Received June 8th, 1866, and on the 9th day of June, 1866, served a copy of the within subpœna duces tecum on P. Labarre, secretary of the board of streets and landings, personally, at the office of said board, in the city hall in this city.

(Signed) M. EGAN,
D'y U. S. Marshal.

New Orleans, June 9th, 1866.

82 *Order continuance, from the minutes of June* 11, 1866.

NEW YORK MAIL STEAMSHIP CO.
vs.
THE CITY OF NEW ORLEANS. } No. 3,852.

For want of time, ordered that this cause be continued until Thursday next, 14th instant, at 11 a. m. by preference.

Motion and order for Subpœnas duces tecum, from the minutes of June 12, 1866.

NEW YORK MAIL STEAMSHIP COMPANY
vs.
THE CITY OF NEW ORLEANS. } No. 3,852.

On motion of Sullivan, Billings, and Hughes, of counsel for plaintiff, ordered that a subpœna duces tecum issue herein to Pascalis Labarre, secretary of the committee of streets and landings,
83 commanding him to produce on the trial of this cause on Thursday, the 14th instant, at 11 a. m., the correspondence and documents which have passed between the bureaus established by General Shepley and the commanders of this department, from August, 1862, to April, 1866.

84 *Subpœna duces tecum.*

Circuit court of the United States for the 6th judicial circuit and eastern district of Louisiana:

The President of the United States to John T. Monroe, mayor of the city of New Orleans, defendant:

You are hereby commanded to produce the book containing the ordinances issued by the bureau of streets and landings from the 1st July, 1862, up to the time said bureau ceased to exist, before the circuit court of the United States for the 5th circuit in and for the said district, to be holden at the city of New Orleans, on the 14th day of June, 1866, then and there to be used in evidence in a certain cause now depending therein, and to be tried between N. Y. Mail S. S. Comp'y and the city of New Orleans, at 11 o'clock a. m., and herein fail not under penalty of two hundred and fifty dollars.

Witness, the honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, at the city of New Orleans, this 12th day of June, in the year of our Lord one thousand eight hundred and sixty-six, and in the 90th year of American independence.

(Signed) CHAS. CLAIBORNE, *Clerk*,
[SEAL.] By B. F. VINOT, *D'y Clerk*.

85 *Marshal's return.*

Received June 12th, 1866, and on the 13th day of same month and year served a copy of the within subpœna duces tecum on Jno. T. Monroe, mayor of New Orleans, personally, at his office in the city hall.

New Orleans, June 14th, 1866.

(Signed) M. EGAN,
D'y U. S. Marshal.

86 *Subpœna duces tecum.*

Circuit court of the United States for the 6th judicial circuit and eastern district of Louisiana:

The President of the United States to Pascalis LaBarre, secretary of the committee of streets and landings:

You are hereby commanded to produce the correspondence and documents which have passed between the bureaus established by General Shepley and the commanders of the department, from August, 1862, to April, 1866, before the circuit court of the United States for the 6th circuit in and for the said district, to be holden at the city of New Orleans, on the 14th day of June, 1866, then and there to be used in evidence in a certain cause now depending therein, and to be tried between the N. Y. Mail S. S. Company and the city of New Orleans, at 11 o'clock a. m., and herein fail not under the penalty of two hundred and fifty dollars.

Witness, the honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, at the city of New Orleans, this 12th day of June, in the year of our Lord one thousand eight hundred and sixty-six, and in the 90 year of American independence.

(Signed) CHS. CLAIBORNE, *Clerk*,
[SEAL.] By F. B. VINOT, *D'y Clerk.*

87 *Marshal's Return.*

Received June 12, 1866, and on the 13th day of same month and year served a copy of the within subpœna duces tecum on P. Labarre, named herein, personally, at his office in the city hall of this city.

New Orleans, June 14, 1866.

(Signed) M. EGAN,
D'y U. S. Marshal.

88 *Order continuance, from the minutes of June 14th, 1866.*

NEW YORK MAIL STEAMSHIP CO.
vs.
THE CITY OF NEW ORLEANS. } No. 3,852.

This cause came up for trial. Sullivan, Billings, and Hughes, and W. W. Howe, for plaintiffs.

Buchanan and Gilmore for defendant.

When it is ordered that the cause be continued until to-morrow, at 11 a. m.

89 *Note of evidence, filed June* 15, 1866.

NEW YORK MAIL STEAMSHIP CO.
vs.
THE CITY OF NEW ORLEANS. } No. 3,852.

Plaintiffs especially offer in evidence the ordinance of the bureau of finance and streets and landings, authorizing a loan of $500,000, and pledging the city property therefor.

Also the ordinance repealing a former ordinance passed by the old elected authorities.

Also the ordinance of the present city government, repealing an ordinance of the military government.

It is admitted that the notes from 9 to 120, inclusive, referred to in the contract of lease, were delivered and surrendered by the late military treasurer, Mr. Walton, to the present elected treasurer, Mr. Hernandez, and that they are the same notes of which one of them, viz. No. 9, has been paid, and that the other 111 notes are
90 now in possession of the clerk of this court, the same having been tendered by deft. to plaintiffs.

J. M. COURTENAY,
G. ROBINSON,
S. HOWELL,
Plff. witnesses.

Admission, filed June 15, 1866.

It is admitted that from May 21, 1862, to March 16, 1866, the military municipal government of New Orleans, through the several bureaus and acting mayor, passed ordinances on all subjects on which a municipal government could legislate, and exercised generally the legislative power given by the charter of 1856, and that these ordinances were published in the papers of the day and were known to and sanctioned by the successive commanders of the department of the gulf.

(Signed) SULLIVAN, BILLINGS, & HUGHES,
Atty's for Plaintiffs.

(Signed) BUCHANAN & GILMORE,
For defendants.

91 *Nota.*

The documents offered in evidence by the plaintiffs and related in the foregoing note of evidence, filed June 15, 1866, copies of which were to be furnished by said plaintiffs, have not been filed nor furnished.

New Orleans, Nov. 3, 1866.
Attest:

CHS. CLAIBORNE, *Clerk.*

92 *Order continuance, minutes of June 15th, 1866.*

NEW YORK MAIL STEAMSHIP COMPANY
vs.
THE CITY OF NEW ORLEANS. } No. 3,852.

This cause was resumed. Sullivan, Billings, and Hughes, and Wm. W. Howe, for plaintiffs. Buchanan and Gilmore, for defendant

When, after hearing further evidence, and the admissions of the parties on file, the cause is continued till to-morrow at 11 a. m.

Note of evidence, filed June 16th, 1866.

NEW YORK MAIL STEAMSHIP COMPANY
vs.
THE CITY OF NEW ORLEANS. } No. 3,852.

Defendant offered proclamation of General Butler, marked 103. Also documents 104, 105, 106, 107. Plaintiff's attorney ob-
93 jects to No. 107.

Objection overruled and paper admitted. Defendant will furnish the whole of the correspondence.

Defendant offered doc't 108. Also document 109. Ruled out. Exception reserved.

Defendant offered documents 110, 111, 112, 113, 114, 115, 116.

Defendant especially offer in evidence 6,305, resolution of the municipal government authorizing the lease of the wharf which is annexed to the lease on file.

Also ordinance of 12 April, 1866, directing the surveyor to remove the obstructions marked 117.

Also Leroy's digest of city ordinances—objected to by plaintiff's attorneys.

Defendant offered document 118.

The court sustains the objection by plaintiff to the digest and directs the defendant to select such ordinances as he may wish to offer and furnish copies of the same.

94 Plaintiffs objects to document 118, and asks for a certified copy of the ordinances, objection sustained. Of 640 the defendant will furnish copies.

Defendant offered 119, also 120.

Also the 111 notes given by pl'ff to defendant now on deposit with the clerk.

Also the act marked 121, as published in the Daily Crescent of 10 March, 1866.

JOHN T. MONROE,
GEO. CLARK,
Defendants' Witnesses.

Document 103.—*Proclamation.*

HEADQUARTERS DEPARTMENT OF THE GULF,
New Orleans, May 1st, 1862.

The city of New Orleans and its environs, with all its interior and exterior defenses, having been surrendered to the combined
95 naval and land forces of the United States, and having been evacuated by the rebel forces in whose possession they lately were, and being now in occupation of the forces of the United States who have come to restore order, maintain public tranquillity, enforce peace and quiet under the laws and Constitution of the United States; the major general commanding the forces of the United States in the department of the gulf, hereby makes known and proclaims the object and purposes of the Government of the United States, in thus taking possession of the city of New Orleans, and the State of Louisiana, and the rules and regulations by which the laws of the United States will be, for the present and during a state of war, enforced and maintained, for the plain guidance of all good citizens of the United States, as well as others who may heretofore have been in rebellion against their authority.

Thrice before, has the city of New Orleans been rescued from the hand of a foreign government, and still more calamitous do-
96 mestic insurrection, by the money and arms of the United States. It has of late been under the military control of the rebel forces claiming to be the peculiar friends of its citizens, and at each time, in the judgment of the commander of the military forces holding it, it has been found necessary to preserve order and maintain quiet by the administration of law martial. Even during the interim from its evacuation by the rebel soldiers, and its actual possession by the soldiers of the United States, the civil authorities of the city have found it necessary to call for the intervention of an armed body known as the "European Legion," to preserve public tranquility. The commanding general, therefore, will cause the city to be governed until the restoration of municipal authority, and his further orders, by the law martial, a measure for which it would seem the previous recital furnishes sufficient precedents.

All persons in arms against the United States are requested to surrender themselves, with their arms, equipments and munitions of war. The body known as the "European Legion," not being
97 understood to be in arms against the United States, but organized to protect the lives and property of the citizens, are invited still to co-operate with the forces of the United States to that end, and, so-acting, will not be included in the terms of this order, but will report to these headquarters.

All flags, ensigns, and devices, tending to uphold any authority whatever, save the flag of the United States, and the flags of foreign consulates must not be exhibited but suppressed. The American ensign, the emblem of the United States, must be treated with utmost deference and respect by all persons, under pain of severe punishment.

All persons well disposed towards the Government of the United States, who shall renew their oath of allegiance, will receive the safeguard and protection in their persons and property of the armies of the United States, the violation of which, by any person, is punishable with death.

All persons still holding allegiance to the confederate States will be deemed rebels against the authorities of the United States,
98 and regarded and treated as enemies thereof.

All foreigners not naturalized and claiming allegiance to their respective governments, and not having made oath of allegiance to the supposed government of the Confederate States, will be protected in their persons and property as heretofore under the laws of the United States.

All persons who may heretofore have given their adherence to the supposed government of the Confederate States, or have been in their service, who shall lay down and deliver up their arms and return to peaceful occupations and preserve quiet and order, holding no farther correspondence, nor giving aid and comfort to the enemies of the United States, will not be disturbed either in person or property, except so far, under the orders of the commanding general, as the exigencies of the public service may render necessary.

The keepers of all public property, whether State, national, or confederate, such as collections of art, libraries, museums, as well as all public buildings, all munitions of war, and armed vessels,
99 will at once make full returns thereof to these headquarters; all manufacturers of arms and munitions of war will report to hese headquarters their kind and places of business.

All rights of property of whatever kind will be held inviolate, subject only to the laws of the United States.

All inhabitants are enjoined to pursue their usual avocations, all shops and places of business and amusement are to be kept open in the accustomed manner, and services to be had in churches and religious houses as in times of profound pleace.

Keepers of all public houses, coffee houses, and drinking saloons are to report their names and numbers to the office of the provost marshal, will there receive license, and be held responsible for all disorders and disturbance of the peace arising in their respective places.

A sufficient force will be kept in the city to preserve order and maintain the laws.

The killing of an American soldier by any disorderly person or mob is simply assassination and murder, and not war, and will
100 be so regarded and punished.

The owner of any house or building in or from which such murder shall be committed will be held responsible therefor, and the house be liable to be destroyed by the military authority.

All disorders and disturbances of the peace and crimes will be referred to a military court for trial and punishment; civil causes between party and party will be referred to the ordinary tribunals. The levy and collections of all taxes, save those imposed by the laws

of the United States, are suppressed, except those for keeping in repair and lighting the streets, and for sanitary purposes. They are to be collected in the usual manner.

The circulation of confederate notes, bonds, evidences of debt, or script, or any trade in the same is strictly forbidden.

No publications either by newspaper, pamphlet, or handbill, giving accounts of the movements of soldiers of the United States within this department, reflecting in any way upon the United States
101 or its officers, or tending in any way to influence the public mind against the government of the United States will be permitted; and all articles of war news, or editorial comments, or correspondence making comments upon the movements of the armies of the United States, or the rebels, must be submitted to the examination of an officer, who will be detailed for that purpose from these headquarters.

The transmission of all communications by telegraph will be under the charge of an officer from these headquarters.

The armies of the United States came here not to destroy, but to make good; to restore order out of chaos, and the government of laws in place of the passions of men. To this end, therefore, the efforts of all well disposed persons are invited to have every species of disorder quelled; and if any soldier of the United States should so far forget his duty or his flag as to commit any outrage upon any person or property, the commanding general requests that his
102 name be instantly reported to the provost guard, so that he may be punished and his wrongful act redressed.

The municipal authorities, so far as the police of the city and crimes are concerned, except as before indicated, is hereby suspended.

All assemblages of persons in the streets, either by day or by night, tend to disorder, and are forbidden.

The various companies composing the fire department in New Orleans will be permitted to retain their organizations, and are to report o the office of the provost marshal.

And finally, it may be sufficient to add without further enumeration, that all the requirements of martial law will be imposed so long as, in the judgment of the United States authorities, it may be necessary. And while it is the desire of these authorities to exercise this government mildly, and after the usages of the past, it must not be supposed that it will not be vigorously and firmly administered, as occasion calls.

By command of Major Gen. Butler :

GEO. A. STRONG,
A. A. G., Chief of Staff.

103 *Document* 104.

General orders, No. 24.

HEADQUARTERS DEPARTMENT OF THE GULF,
New Orleans, May 10, 1862.

Acting Brig. Gen. George F. Shepley, colonel 12th Maine volunteers, is hereby appointed military commandant of New Orleans.

All officers on duty in this city, or in Algiers, except officers of the division staff, will report to him.

By command of Major General Butler :

GEO. C. STRONG,
Assistant Adjutant General.

Official copy:
(Signed) DE WITT CLINTON,
Brevet Lieut. Colonel, Judge Advocate.

Document 105.

Special orders, No. 119.

HEADQUARTERS DEPARTMENT OF THE GULF,
New Orleans, May 5th, 1865.

[Extract.]

104 5. Colonel Samuel M. Quincy, 73d U. S. colored infantry, is relieved from his present duties, and is hereby assigned to the duty of acting major of the city of New Orleans.

Upon the receipt of this order he will proceed to the city hall, and assume the duties of that office.

The present acting mayor is directed to surrender to him all the papers connected with that office.

By command of Major General Banks :

J. C. STONE,
Captain and Assistant Adjutant Gen'l.

Official:
(Signed) NATHANIEL BURBANK,
1st Lieut. and Acting Assistant Adj't General.

Document 101.

Special order, No. 152, *part* 17.

HEADQUARTERS DEPARTMENT OF THE GULF,
New Orleans, La., June 8th, 1865.

Mr. Hughes Kennedy is appointed acting mayor of the city of New Orleans.

Colonel Samuel M. Quincy, 73d U. S. colored infantry, is
105 relieved from duty as acting mayor, and will rejoin his regi-

ment. He will turn over to Mr. G. Burke, who is authorized to act until the arrival of the acting mayor, the duties of the office in which he is now acting.

By order of Maj. Gen'l E. R. S. Canby:

(Signed) C. A. DYER,
Assistant Adjutant General.

Official copy:

(Signed) DE WITT CLINTON,
Brevet Lieut. Colonel, Judge Advocate.

Document No. 107.

HEADQUARTERS DEPARTMENT OF LOUISIANA,
New Orleans, La., September 4th, 1865.

His honor the mayor of New Orleans:

SIR: Your communication of the 24th ult. has been considered, in connection with the report of the chief quartermaster of the department, subsequent to his conference with the city surveyor. As the result of this examination, I will recommend to the War
106 Department the appointment of a joint commission for the purpose of selecting the levee and wharf space required by the War, Navy, and Treasury Departments, to be held as permanent reservations.

The selection to be made with reference to the wants of these departments in a period of peace, and with due regard to the commercial interests of the city of New Orleans, and will recommend that the rights and interests of the government to the remainder of the levee and wharf space held by the city of New Orleans at thet ime of capture by the forces of the United States be relinquished to the city, subject to the conditions that no harbor, wharf, light, or hospital dues shall be charged against any vessel belonging to the government of the United States.

I have believed that the formal surrender of the rights acquired by the United States, during, and in consequence of the rebellion, would not be formally relinquished until the State or States in which they were acquired were restored to the Union, but in view of the
107 suggestions made by you of the importance of the projected work to the commercial and financial interests of the city. I will ask that the action recommended be taken at the earliest practicable moment. In the mean time, the instructions of the 24th ult., in relation to the reservation for military purposes will stand as notified by the chief quartermaster and city surveyor.

The suggestions in my communication of the 24th ultimo, with regard to the period of the contemplated leases were made in the interests of the city. I did not, and do not think it wise or prudent for the present city government to commit the city to a course of action that may result in useless and costly litigation, while I do not doubt that the city of New Orleans will ultimately be fully reinstated.

That action has not yet been taken, and the time and manner are more or less remote and contingent, and, until that is done, the want of power in the city goverment opens the road for litigation, and that litigation will determine nothing, so far as the city is con-
108 cerned except to increase the tax levy.

You will permit me to add that the Government of the United States is not responsible for the bankrupt condition of the city finances, nor are its officers and agents amenable to the reproach which you make against them.

I cannot answer for the officers of other departments than that in which I am serving, but I believe that the history of New Orleans, since its occupation will show, that they have never been slow to concede to the city whatever they could legally concede, and to render any assistance that it was in their power to render; and I know that nearly every military commander since the occupation has made himself personally responsible to the treasury by directing large sums of money from the original destination and applying them to the wants of the city, its charrities, and its poor.

The subject referred to in the last paragraph of your letter, was referred to me some time since and so much of your letter to his excellency, the President, as related to the New Orleans and
109 Jackson and New Orleans and Opelousas railroad was reported upon some time since, and that which relates to the wharves will be so soon as the indebtedness of the city to the different departments of the army can be ascertained.

I am sir, very respectfully, your ob't servant,

(Signed) E. R. S. CANBY,
Maj. Gen'l Commanding.

A true copy:

(Signed) DE WITT CLINTON,
Brevet Lieut. Colonel, Judge Advocate.

Document 108.

Endorsement on communication of J. M. Courtenay, agent of the New York Mail Steamship company asking the approval of Major General E. R. S. Canby, on subject of building a wharf for said company.

HEADQUARTERS, DEPARTMENT OF LOUISIANA,
New Orleans, La., Sept. 15th, 1865.

110 Respectfully returned; the military authorities will not interfere with the wharves, except so far as to prevent the government from being ousted from the occupation of such wharves and levees as are required for public purposes. The mayor of the city has been fully advised upon these subjects, and if the points to which that interference will be limited, the locality covered by the lease herein referred to is not one of the points. I do not think how-

ever that it will be wise either for the city or for the lessees under the city, to embark in enterprises involving large expenditures until after the corporation has been fully reinstated in its original rights.

This can only be done by executive authority, and I presume will be done within a short period.

(Signed) E. R. S. CANBY,
Maj. Gen'l Commanding.

Official copy:
(Signed) DE WITT CLINTON,
Brevet Lieut. Colonel, Judge Advocate.

111 Document 109 ruled out.

Document 110.

STATE OF LOUISIANA, OFFICE SECRETARY OF STATE,
New Orleans, May 24th, 1866.

I hereby certify that the returns of an election for municipal officers of the city of New Orleans, held on the second Monday (the 12th day) of March, 1866, in conformity with the provisions of the acts, Nos. 17 and 34, passed by the general assembly of Louisiana, in the month of February, 1866, made to this office by Charles Bienvene, then sheriff of the parish of Orleans, show that the following officers were duly elected. viz :

John T. Monroe, mayor city of New Orleans, P. G. Mohan, comptroller, city of New Orleans, Alfred Bellanger, street commissioner do., William J. Ahern, Arthur Gastinel, J. A. Letten, and H. T. Menard, Recorders of the city of New Orleans; J. O. Nixon, Williamson Smith, James McCloskey, George Clark, Norman Whitney, E. D. White, F. A. Woolfrey, A. W. Bosworth, Thomas McKnight, aldermen
112 of the city of New Orleans.

P. Cummins, W. H. Higginbotham, James Prague, F. Lurgess, Wm. McCulloch, Thomas S. Moore, H. F. Sturcken, J. B. Cunningham, John P. Montamat, Victor Prados, John Preisley, George D. Kauz, E. Goldman, John F. Crautz, P. Kaiser, assistant aldermen of the city of New Orleans.

Given under my hand and the seal of the State, at the city of New Orleans, the day and date above written.

(Signed) I. H. HARDY,
Secretary of State.

Document 111.

General Orders, No. 26.

HEADQUARTERS, DEPARTMENT OF LOUISIANA,
New Orleans, La., March 18, 1866.

Upon the qualification and inauguration of the municipal officers who may have been elected under the law of the State of Louisiana, passed on the 13th day of February, 1866, and the governor's

113 proclamation of March 6, 1866, the military order of May 20, 1862, creating the present municipal government of the city of New Orleans, and any subsequent military orders enlarging, limiting, or otherwise modifying the powers, duties, and obligations of the said municipal officers, will be vacated from and after 12 o'clock m. of Monday, the 19th day of March, 1866, the day appointed and designated by the laws of Feb'y 13, 1866, as above cited; provided that this order shall not be construed as affecting or determining any question of public or private rights, or as impairing, in any degree, the obligations of any contract created or entered into by the present municipal authorities under, and in conformity with, the powers delegated to them by competent military authority.

If any of the persons elected, or claiming to be elected, to municipal offices, under the authority of the law and proclamation above cited, are disqualified by reason of being excepted from the benefits of the President's proclamation of May 29, 1865, that fact will 114 be determined by the commander of this department, or other superior military authority, and such persons will not be permitted to exercise the functions of the offices to which they have been elected, or may claim to have been elected, until the disability has been removed by the President, or he has otherwise passed upon the case or cases of the person or persons so disqualified. In cases of disqualification under the laws of the State of Louisiana, the facts must be determined by the laws of that State, and by ordinary procedure in the courts of justice.

By order of Major General E. R. S. Canby.

WICKHAM HOFFMAN,
Assistant Adjutant General.

Official:
(Signed) NATHANIEL BURBANK,
Acting Assistant Adjutant General.

Document "112."

General Orders, No. 63.

HEADQUARTERS, DEPARTMENT OF LOUISIANA,
115 *New Orleans, La., March 19th,* 1866.

[Extract.]

2. It appearing that John T. Monroe and James O. Nixon, who received, respectively, at the late municipal election, a majority of the votes for the offices of mayor and alderman, may come within the classes of exceptions mentioned in the President's proclamation of amnesty, neither having received a special pardon, they are suspended from the exercise of any of the functions of those offices until their cases can be investigated, and the pleasure of the President be made known; but they will be allowed to take the oath of office, and the mayor elect will be allowed to administer the usual oath to persons elected.

The remaining persons elected will, upon complying with the requirements of the constitution and laws of the State, be inducted into office, and the municipal government of the city, as thus constituted, and with the two exceptions above mentioned, is declared to be organized and in full force and vigor.

By order of Major General E. R. S. Canby.

(Signed) WICKHAM HOFFMAN,
Ass't Adj't Gen'l.

Official:

(Signed) NATHANIEL BURBANK,
1*st Lieut., Act'g Ass't Adj't General.*

116 *Document* 113.

Special Orders, No. 63.

HEADQUARTERS, DEPARTMENT OF LOUISIANA,
New Orleans, La., March 19, 1866.

[Extract.]

3. I, Add. Rozier, esq., is appointed mayor of the city of New Orleans, pro tempore, and will act in that capacity until the municipal government of the city is organized, as provided for by the 15th section of the city charter, in the case of the sickness or temporary absence of the mayor.

By order of Major General E. R. S. Canby:

WICKHAM HOFFMAN,
Assistant Adjutant General.

Official:

(Signed) NATHANIEL BURBANK,
1*st Lieut., Acting Ass't Adj't General.*

Document 114.

Special Orders, No. 64.

HEADQUARTERS, DEPARTMENT OF LOUISIANA,

117 *New Orleans, La, March* 20*th*, 1866.

[Extract.]

3. The mayor pro tempore of the city of New Orleans, having reported that the municipal government of the city has been organized in accordance with the provisions of the charter, I. Ad. Rozier, esq., is relieved from the special duty assigned him by Special Orders No. 63, paragraph 3, of the 19th instant, and George Clarke, esq., president of the board of aldermen, is recognized under the 15th section of the charter as mayor, pro tempore, of the city of New Orleans.

The temporary appointments made by Mr. Rozier, will be vacated as soon as their successors are appointed.

By order of Major General E. R. S. Canby:

(Signed) WICKHAM HOFFMAN,
Assistant Adjutant General.

Official:

(Signed) NATHANIEL BURBANK,
1*st Lieutenant, Acting Assistant Adjutant General.*

118 *Document* "115."

Special Orders, No. 82.

HEADQUARTERS, DEPARTMENT OF LOUISIANA,
New Orleans, La., April 11, 1866.

[Extract.]

3. By direction of the President, the suspension of John T. Monroe and James O. Nixon from the exercise of their functions of mayor and alderman of the city of New Orleans, respectively, as promulgated in Special Orders No. 63, paragraph 2, current series, from these headquarters, will continue in force until they shall apply to the President and receive his special pardon, such pardon being needed before they can exercise any official functions.

By order of Major General E. R. S. Canby:

(Signed) WICKHAM HOFFMAN,
Assistant Adjutant General.

Official:

(Signed)

NATHANIEL BURBANK,
1*st Lieut., Acting Ass't Adj't General.*

119 *Document* "116."

Special Orders, No. 108.

HEADQUARTERS, DEPARTMENT OF LOUISIANA,
New Orleans La., May 14, 1866.

[Extract.]

2. Official information having been received at these headquarters that John T. Monroe has been pardoned by the President, so much of paragraph 2, of Special Orders No. 63, current series, from these headquarters, as suspends him from exercising the functions of his office as mayor of New Orleans, is hereby rescinded.

By order of Major General E. R. S. Canby:

(Signed) NATHANIEL BURBANK,
1*st Lieut, Acting Ass't Adj't General.*

Official:

(Signed) NATHANIEL BURBANK,
1*st Lieut., Acting Ass't Adj't General.*

Document 117.

No. 13.—*New Series.*

MAYORALTY OF NEW ORLEANS,
120 *City Hall, 14th day of June,* 1866.

Whereas the municipal authorities are bound to preserve unobstructed for public use the streets of the city and the banks of the river, which are public places.

And whereas certain steamships and steamboats companies, and other persons have lately caused to be enclosed certain portions of the bank of the river, and erected thereon certain buildings, be it therefore

Resolved, that the city surveyor be, and he is, hereby authorized and directed to cause to be removed immediately all fences, buildings, etc., and other obstructions found on the levee in front of the city.

WM. McCULLOCH,
Pres't Board of Assistant Aldermen.
(Signed) GEORGE CLARK,
President pro tem. Board of Aldermen.

Approved: April 12th, 1866.
(Signed) GEORGE CLARK,
Mayor pro tem.
(Signed) JOHN W. OVERALL,
[SEAL.] *Secretary.*

121 *Ordinance No.* 640 *offered in evidence by defendant June* 16*th, and filed June* 18*th*, 1866.

No. 640.

MAYORALTY OF NEW ORLEANS, CITY HALL,
February 11*th*, 1853.

An ordinance to regulate the levee dues and wharfage on ships and vessels arriving from sea, and on steamboats, flatboats, etc., arriving at the port of New Orleans.

ART. 1. Be it ordained by the common council of the city of New Orleans, that, from and after the 1st of January, 1853, the levee or wharfage dues on ships and other decked vessels and steamship arriving from sea, shall be fixed as follows: On all vessels of 1000 tons, and under twenty cents per ton, and vessels of tonnage over 1000 tons, fifteen cents per ton. On all steamships navigating the gulf of Mexico or the ocean, fifteen cents per ton.

ART. 2. Be it further ordained, that from and after the 1st January, 1853, the levee dues on all steamboats, which shall moor
122 or land in any part of the port of New Orleans, shall be fixed as follows: Ten cents per ton, if in port not over five days, and five dollars per day after said five days shall have expired. Providing

that boats arriving and departing more than once in each week shall pay only seven cents per ton each trip.

ART. 3. Be it further ordained, that from and after the first of January, 1853, the levee dues on flatboats, barges, etc., fully or in part laden with produce, materials, or merchandise of any kind shall be as follows: Flatboats not measuring more than eighty feet, eight dollars; eighty to one hundred feet, ten dollars; one hundred feet and over, thirteen dollars; on each barge, measuring less than seventy feet and not twenty tons, eight dollars; on each steamboat hull, used as a barge twenty-five dollars; on each scow or coasting pirogue two dollars.

ART. 4. Be it further ordained, that so much of all existing ordinances as are inconsistent with the provisions of this ordinance
123 be, and are, hereby repealed.

(Signed) W. C. C. CLAIBORNE,
President Board of Aldermen.

(Signed) FRANS. ALPUENTE,
Pres't Board of Assistant Aldermen.

Approved: February 11th, 1853.

(Signed) A. D. CROSSMAN, *Mayor.*

A true copy:

(Signed) THEO. MARKS, *Secretary.* [SEAL.]

6,305.—*Resolution of the municipal government annexed to the lease on file.*

No. 6,305.

MAYORALTY OF NEW ORLEANS, CITY HALL.
July 8th, 1865.

Resolved, that the mayor be, and he is, hereby authorized and empowered to enter into a contract with the New York Mail Steamship Company for the lease to said company, by virtue of a notarial act or otherwise, and the collection of the levee dues on their
124 own and their chartered vessels, for the term of ten years from the tenth day of July, 1865, of a certain section of the public levee, being six hundred feet front, by a depth of two hundred feet near Jackson square a plan of which is on file in the office of the city surveyor at a rental of eight thousand dollars per annum payable in monthly instalments: the said company to have the privilege of inclosing said section in the manner set forth in the plan aforesaid: All repairs of wharves and all other improvements to be at the exclusive cost of the company, and all to be delivered to the city at the expiration of the term mentioned, in good order and condition, (the natural wear and tear excepted,) without any charge to the city.

Resolved, that the mayor be, and he is hereby authorized to make such additional terms and conditions not herein set forth, as may seem in his judgment needed by the public interests.

Resolved, That all ordinances and parts of ordinances in conflict with the foregoing be, and they are, hereby declared null and
125 void.

EDWARD AMES,
Chairman Bureau Streets and Landings.
G. BURKE,
Chairman Bureau of Finance.

Approved: July 8th, 1865.

HU. KENNEDY, *Mayor.*

COMPTROLLER'S OFFICE, CITY OF NEW ORLEANS,
$80.000. *New Orleans, July 11th*, 1865.

The treasurer will please receive from A. Hero, not. of city of New O. eighty thousand dollars, and credit wharves and levees, being for 120 notes signed by J. M. Courtenay ag't N. Y. M. S. Co. of $666 66⅔ each.

Received the above.

JOHN S. WALTON, *Treasurer.*
A. MOREE, *D'y Comptroller.*

Power of Attorney.

Know all men by these presents, that the New York Mail Steamship Company by James A. Raymond, president, have made, constituted, and appointed, and by these presents, do make, con-
126 stitute, and appoint Asahel S. Mansfield and John N. Courtnay, their true and lawful attorneys, for them and in their name, place and stead, to contract for, and execute a lease on the part of said company to be given by the city of New Orleans to said company of a certain portion of the levee in front of said city to be used by the ships forming the line of the company for a period of ten years from the date of the same, giving and granting unto the said attorney full power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done in and about the premises as fully to all intents and purposes as they might or could do if personally present with full power of substitution and revocation hereby ratifying and confirming all that the said attorneys or their substitute shall lawfully do or cause to be done by virtue hereof.

In witness whereof, I have hereunto set my hand and affixed the seal of the company the 27th day of April, in the year one
127 thousand eight hundred and sixty-five.

[SEAL.] JAMES A. RAYNOR,
Pres't New York Mail Steamship Co.

Sealed and delivered in the presence of—

STATE OF NEW YORK, *City, County of New York, ss:*

Be it remembered that on the twenty-eighth day of April, 1865, before me, Sylvester Lay, a notary public within and for the State of New York, duly commissioned and sworn, residing in the city of New York,

Personally appeared James A. Raynor, known to me to be the president of the New York Mail S. S. Co., who, being duly sworn, says that he resides in the city of N. Y.; that the seal affixed to the foregoing power of attorney is the corporate seal of said company, and was affixed thereto by authority of said company, and that he subscribed the same by like authority.

128 In witness whereof, I have hereunto set my hand and affixed my official seal, the day and year aforesaid.

[SEAL.] SYLVESTER LAY,
Notary Public, New York.

$666 66⅔. NEW ORLEANS, *8th July*, 1865.

On the 8th of August, 1865, after date the N. Y. Mail Steamship Company promise to pay to the order of the treasurer of the city of New Orleans, at the office of said treasurer, six hundred and sixty-six 66⅔ dollars, value received in rent.

J. M. COURTNAY,
Agent N. Y. M. S. S. Co.

No. 1.—Endorsed:
JOHN S. WALTON,
Treasurer.

Ne varietur. New Orleans, 8th July, 1865.
ANDREW HERO, *Not. Pub.*

129 *Document* 120.—*Lease of wharf.*

The city of New Orleans to New York Mail Steamship Co.:

STATE OF LOUISIANA,
Parish and City of New Orleans:

Be it known, that on this ninth day of January, in the year of our Lord one thousand eight hundred and sixty-four, and of the independence of the United States of America the eighty-eighth, before me, Andrew Hero, a notary public in and for the parish and city of New Orleans, State of Louisiana, duly commissioned and qualified, and in the presence of the witnesses hereinafter named and undersigned, personally came and appeared the honorable James F. Miller, acting mayor of the city of New Orleans, herein acting in his said capacity, and the said James F. Miller, acting as afore-
130 said, declared that by virtue of the authority in him vested by a resolution of the finance committee of the city of New Orleans, adopted at their sitting on the first day of January, 1864, No. 6,174, a true copy whereof is hereunto annexed for reference:

He does, by these presents, grant, bargain, sell, and confirm unto the New York Mail Steamship Company herein represented by James A. Reynor, their duly qualified agent and attorney in fact, by virtue of a power of attorney duly executed by John Raynor, the

president, and Robert J. Hubbard, the secretary and treasurer of said company, before James W. Fisher, a notary public for the city of New York, on the 24th of December, 1863, and hereunto annexed for reference, the right of the collection of levee dues for a certain section of the public land, being two hundred and eighty feet on the levee front near Jackson square, together with the privilege of the use of a slip of sixty-two feet, laying between the steamship depot and the ferry landing, according to a plan on file in the office of the city surveyor; also, with the privilege to said company to
131 enclose said section in a manner satisfactory to the said city surveyor, for a term of five years, to commence on and be computed from the 1st January, 1864, at a yearly rental of the sum of eight thousand dollars, to be paid in monthly instalments by notes of said company.

This lease is further made and accepted on the following conditions and stipulations, to wit:

First. If said company shall collect from any vessel not connected with or chartered by or carrying freight for said company, any fees for landing at said section, the said company shall pay the same over to the city of New Orleans.

The annual rental shall be paid in equal monthly instalments, to be made on the first day of each month in each of the five years, the first month of which is to be paid in cash, and in compliance with which the said company has paid through their said attorney, the sum of six hundred and sixty-six dollars and sixty-six and two-thirds
132 cents, and furnished their fifty-nine promissory notes, each for a like sum of six hundred and sixty-six dollars sixty-six and two-thirds cents, all dated on the first of January, 1864, and made payable as follows: on the first of February, March, April, May, June, July, August, September, October, November, and December, 1864, and on the first day of each month of the years 1865, 1866, 1867, and 1868; which said notes after having been paraphed by me, notary, for identification herewith, were with the said cash payment delivered to said James F. Miller, mayor as aforesaid, who hereby acknowledges the receipt thereof.

It is well understood and agreed that in case of non-payment of said above mentioned notes, or any of them, the city of New Orleans reserves the right to declare this contract ipso facto, null and void, without applying to a court of justice.

Third. Said company will be permitted to occupy, whenever necessary, the space or slip between said section and the second district ferry landing, for which no additional charge shall be made.

Fourth. The city of New Orleans hereby binds and obligates
133 itself to put said section in good condition and repair within two months from the date hereof; and the said company hereby bind themselves to keep and deliver up to the said city of New Orleans the said section in the like good condition and repair, the usual wear and tear, accidents of Providence, or the destruction of the same by fire or flood excepted.

Fifth. Should said company fail to enjoy the use of said section by

reason of a blockade of the city, or the capture of the city by any power hostile to the government of the United States, then this contract, and all unpaid notes given for the same rental shall be null and void.

Thus done and passed in my office, at New Orleans, aforesaid, in the presence of Charles F. Barry, and Theo. M. Hyde, witnesses, both of this city, who hereunto sign their names with the parties and me, the said notary, the day and date aforesaid.

(Original signed)

The New York Mail Steamship Company
By JAMES A. RAYNOR, *Att'y.*
JAMES F. MILLER,
134 *Captain U. S. A., Acting Mayor.*
ANDREW HERO, *Not. Pub.*
CHS. F. BARRY.
THEO. M. HYDE.

A true copy:
[SEAL.] ANDREW HERO, *Not. Pub.*

Documents annexed to the foregoing lease.—Power of attorney to James A. Raynor.

Know all men by these presents, that we, John Raynor, president, and Robert J. Hubbard, secretary and treasurer of the new Mail Steamship Company have made, constituted, and appointed, and by these presents do make, constitute, and appoint James A. Raynor, our true and lawful attorney for us, and in our names, places and stead, to make and sign all contracts, leases, or other papers, to sign
135 the checks or notes, or endorse the same for the New York Mail Steamship Company, we hereby giving and granting unto the said attorney full power and authority in and about the premises, and generally to do and perform all and every act and thing whatsoever requisite and necessary, as fully to all intents and purposes, as we might or could do if personally present, with full power of substitution and revocation, hereby ratifying and confirming all that the said attorney or his substitute shall lawfully do or cause to be done by virtue hereof.

In witness whereof, we have hereunto set our hands and the corporate seal of the company, the twenty-fourth day of December, one thousand eight hundred and sixty-three.

(Signed) JOHN RAYNOR, [SEAL.]
President N. Y. M. S. S. Co.

Sealed and delivered in the presence of—
ROBT. J. HUBBARD,
Secretary and Treasurer N. Y. M. S. S. Co.

136 Be it known that on the twenty-fourth day of December, in the year one thousand eight hundred and sixty-three, before me personally came John Raynor, president, and Robert J. Hubbard,

secretary and treasurer of the New York Mail Steamship Company, known to me to be the individuals described in and who executed the foregoing power of attorney, and also known to me to be the president and secretary and treasurer of the said company, who severally acknowledged the above letter of attorney to be his act and deed.

In testimony whereof, I have hereunto subscribed my name and affixed my seal of office the day and year last above written.

(Signed) JAMES W. FISHER, [SEAL.]
Notary Public, N. Y. City.

Copy.—*No.* 6,174.

MAYORALTY OF NEW ORLEANS,
City Hall, 5th day of January, 1864.

137 *Resolved*, That the mayor be, and is hereby authorized and empowered to enter into a contract with the New York Mail Steamship Company for the sale to said company of the collection of levee dues for the term of five years from January 1st, 1864, for a certain section of the public levee, being two hundred and eighty feet on the levee front, near Jackson square, a plan of which said section is on file in the office of the city surveyor, at a rental of eight thousand dollars per annum, said company to have the privilege to enclose said section in a manner satisfactory to the said city surveyor.

Resolved, That the mayor be authorized to make such additional terms and conditions as in said judgment the public interest may require.

(Signed) D. S. DEWES,
Chairman Bureau S'ts and L'd'gs.

(Signed) E. H. DURELL,
Chairman Bureau of Finance.

Approved Jan'y, 6th, 1864.
(Signed) JAMES F. MILLER,
Captain U. S. A., Acting Mayor.

138 A true copy:
Attest: (Signed) D. L. GIBBENS, *Sec'y.* [SEAL.]

COMPTROLLER'S OFFICE, CITY HALL,
New Orleans, January 11th, 1864.

The treasurer will please receive from Andrew Heró, city notary, fifty-nine promissory notes, drawn by the New York Mail Steamship Company, due on the 1st day of February, 1864, and monthly thereafter, amounting to thirty-nine thousand three hundred and thirty-three and 34-100 dollars, 59 notes for $39,333 34-100.

Received the above.
(Signed) JOHN S. WALTON, *Treasurer.*
J. W. LASTER, *Deputy Controller.*

COMPTROLLER'S OFFICE, CITY OF NEW ORLEANS,
$666 66-100. *New Orleans, Jan'y 11th*, 1864.

139 The treasurer will please receive from Andrew Hero, city notary, six hundred and sixty-six and 66-100 dollars, and credit wharves and levee, being for cash payment of the N. Y. Mail S. S. Co. for lease.

Received the above.

(Signed) JOHN S. WALTON, *Treasurer.*
J. W. LASTER, *Deputy Comptroller.*

STATE OF LOUISIANA, *City of New Orleans.*

I, the undersigned notary, do hereby certify the foregoing to be a true and correct copies of the documents annexed to the original act of lease passed in this office on the 9th January, 1864.

In faith whereof, I grant these presents under my signature and seal of office on this 26th day of May, A. D. 1866.

[SEAL.] ANDREW HERO, *Not. Pub.*

140 *Document* 119.—*Lease of wharves, first section, city of New Orleans, to John Baker.*

STATE OF LOUISIANA, *City of New Orleans:*

Be it known that on this thirty-first day of August, in the year of our Lord one thousand eight hundred and fifty-eight, and the eighty-third of the independence of the United States of America, before me, Eusebe Bonny, notary public, in and for the parish and city of New Orleans, duly commissioned and sworn, and in presence of the undersigned witnesses, personally came and appeared the honorable Gerard Stith, mayor of the city of New Orleans, and herein acting in that capacity, and Mr. John Baker, also of this city; and the said Gerard Stith, mayor as aforesaid, declared that by virtue of the authority in him vested by resolution No. 4,137, passed by the

141 common council of the city of New Orleans, and approved on the nineteenth instant, copy of which resolution is hereto annexed for reference and confirmation of the sale and adjudication made by the city controller on the sixteenth instant, as it will appear by reference to the process verbal hereto annexed, he does by these presents grant, bargain, sell, and confirm unto the said John Baker, the revenues of all the wharves and landings of this city, lying and being upon the Mississippi river, and contained within the upper or southern limit of said city and the upper line of Felicity road, constituting the first section of the wharves of said city, said revenues to be collectable under existing ordinances, upon all ships, vessels, steamships, steamboats, flatboats, and water crafts of any and every description whatsoever, for the term of four years and nine months, commencing on the first day of October, eighteen hundred and fifty-eight, and ending with the thirtieth June, eighteen hundred and sixty-three.

142 And for the purposes contemplated, the said Gerard Stith, in his said capacity of mayor, does hereby subrogate the said

John Baker to all the rights and privileges of the city of New Orleans, to sue for and collect said revenues.

And the contracting parties do hereby mutually agree, stipulate, and covenant that the said John Baker shall not sell, transfer, assign, set over, subrogate, or sub-lease his right, title, and interest in the revenues of said section to any person or persons whatsoever; and in case of any sale, transfer, assignment, subrogation, or sub-lease made by any person or persons, of the rights or interests acquired under and by virtue of this contract, such sale, transfer, assignment, subrogation, or sub-lease shall work a forfeiture of said rights and interests, so acquired as aforesaid, and the same shall revert to the city of New Orleans.

That the city of New Orleans reserves to herself and excepts from said sale, each and every landing and ferry wharf now existing, and each and every nuisance wharf now existing, and all revenues
143 arising from the same, and also a portion of the wharves of one hundred and fifty feet on the river front, starting from the upper limit of the city and running down, for a ferry landing, is reserved by the city, and the revenues thereof.

That the said purchaser or lessee shall accept and take possession of the wharves, landings, and levees contained within the section adjudicated to him in the condition in which the same may be on the first day of October next, (1858,) and the said purchaser or lessee, so accepting and taking possession of the said wharves, landings, and levees, shall repair the same, and keep the same in good order and condition during the whole term of four years and nine months, commencing with the first day of October, 1858, and ending with the 30th June, 1863, provided that the lessee shall have no right to build any shed warehouse on platform of the said wharves without the permission of the common council.

That the levees named in the foregoing paragraph shall ex-
144 tend back to the line of the street or streets fronting the river, that is to say, the levée comprised within the section herein sold shall extend back to the line of Water street, from the upper line of the fourth district to Adele street, and to Tchoupitoulas street and New Levee streets, from Adele street to Felicity road; and it is hereby well understood that the city claims and reserves to herself the right to appropriate, sell, lease, and use, or in any manner dispose, as may be deem expedient by the common council, of any portion of the levees comprised within said section, whenever any of said levees shall become, in the opinion of the common council, unproductive, inoperative, or useless to and for the great purposes of commerce or public use.

That the repairs of the levees required to be made by the said purchaser or lessee as aforesaid, shall consist of grading the same, according to the grades already established; in covering the same with hard substances, such as lake or oyster shells and gravel; in keeping the same always in good order by filling up all holes on their first appearance with hard substances, as above mentioned, in
145 filling up with river sand all parts of the same which may

cave in or sink below the grades aforesaid; and in keeping the bulkheads on the outside of the same always in good order and condition; and whenever the batture shall form so as to require the levee to be extended, the lessee shall, on the order of the common council, fill up such parts of the batture and build such levees as said common council may deem necessary, as well as all new bulk heads.

That the repairs of the wharves to be made by the purchaser or lessee under this contract, shall consist in repairing all holes in the flooring of the wharves and inclined planes, immediately upon their first appearance, in raising all portions of the wharves which may have sunk, or which may sink below the levels now established, in taking out and renewing all caps and stringers, piles, fender-piles, flooring, &c., which may be found rotten or decayed, in building anew all wharves which from general decay may require the same; and extending into the river all wharves which may require extension, so as to have at all times a depth of water of twenty feet
146 at the water-line of each and every wharf used for the landing and discharge of ships, and depth of water ten feet at the water-line of each and every wharf used for the landing and discharge of steamboats.

That in making the repairs aforesaid, the piles used shall be of lake or river timber of the best quality, eleven by eleven inches square at one end, and nine by nine inches square at the other end, and shall be driven from fifteen to twenty feet into the solid ground, at distances of ten feet from the centres; the heads of the piles shall be squared according to the levels, to be given by the city surveyor, and shall receive and support eleven by eleven inches square caps, which shall be strongly fastened to each of the said piles, with drag nails one inch square by eighteen inches long. The stringers used shall be at least ten inches square, shall rest at right angles upon the caps, at distances of five feet from the centres, and shall be strongly fastened at each intersection with a cap with drag nails, one inch square by sixteen inches long. The plank used for the flooring shall
147 be of yellow pine, of the best quality twelve inches wide, not less than three inches thick, and not less than fifteen feet long; they shall be strongly nailed to each of the stringers, with seven-inch pressed spikes, two at each end of each plank, and one at each intersection of the stringers.

That each and every wharf used for the landing and discharge of steamboats, shall have an inclined plane projecting from the foot thereof, of at least thirty feet in width; that on the outside of said inclined plane and adjoining the last row of piles thereof, there shall be a driver, a row of piles which shall receive a cap eleven by eleven inches square, with nine nine-inch tenons and mortises, and on the top of said cap shall rest a fender-cap twelve inches square, which shall be fastened to the two other caps, at a distance of five feet, with screw bolts of one and one-half inches in diameter and of suitable length, that the four rows of piles of each inclined plane shall be braced every ten feet with ten by ten inches braces, which shall be fastened to each pile with screw bolts of one inch diameter, and of

suitable length, and that the purchaser or lessee, in accepting
148 and taking possession of said wharves, in accordance with this contract, shall repair and keep in good order and condition, the whole of said term of four years and nine months, such inclined planes aforesaid as do now exist connected with the wharf or wharves so accepted and taken possession of; and in case there shall be no inclined plane as above required, at the time of accepting and taking possession of said wharf or wharves, then the said purchaser or lessee shall cause said inclined plane to be built at his expense, and shall keep the same in repair as aforesaid, during the whole of said term of four years and nine months.

That each and every wharf used for the landing and discharge of ships, a row of fender-piles shall be driven, each pile ten feet apart, and fastened in a strong manner to the piles of the wharves with at least two screw bolts of one and a-half inches in diameter; that on the front of said wharves two fender-caps shall be placed, one on a level with the flooring of the wharf, and the other at five feet above low water mark, said fenders shall be twelve by twelve inches
149 square, and to be fastened to the piles of the wharf with screw bolts one and a half inches in diameter; and that said lessee in taking possession of said wharves shall repair and keep in good order and condition, during the whole term of this lease, such fender-piles and fender-caps as do now exist connected with the wharf or wharves so accepted and taken possession of; and in case there shall be no fender-caps, as above required, at the time of accepting and taking possession of said wharves, then the said lessee shall cause said fender-piles and fender-caps to be driven and placed as above required at his costs, and shall keep the same in repair during the whole of said term of four years and nine months.

That at each and every wharf used for the landing and discharge of steamships, fenders shall be driven at equal distances of twenty feet, and each fender shall be composed of four piles eleven by eleven inches square, strongly fastened together, and to the wharves with at least six or seven bolts of one and a half inches in diameter. That the four outside rows of piles of each and every wharf used
150 for the landing and discharge of steamships and of ships shall be braced every ten feet with ten by ten inches braces, which shall be fastened to each of said piles with screw bolts of one inch in diameter, and that said lessee, in accepting and taking possession of said wharves, shall repair and keep in good order and condition, during the whole term of four years and nine months, the length of this lease, such fenders and braces as do now exist connected with the wharves so accepted by the said lessee; and in case there shall be no such fenders or braces at the time of accepting and taking possession of said wharves, then said lessee shall cause said fenders to be driven and said braces to be made at his own cost, and shall keep the same in good repair and condition during the whole of said term of four years and nine months.

That in all the wharves accepted and taken possession of by said John Baker, lessee, mooring piles, twelve inches square, shall be

driven as follows, to wit: on the steamboat wharves, single piles, along the inclined planes, at distances of forty feet from the centres, on the steamships and ship wharves, double piles, wheresoever the harbor master shall direct.

151 That each of the aforesaid mooring piles shall be strongly fastened to the piles of the wharves with at least two screw bolts of one inch in diameter, and shall project three and a half feet above the flooring of the wharves; and said lessee, in accepting and taking possession of said wharves, shall repair and keep in good order and condition, during the whole of said term of four years and nine months, such mooring piles as do now exist connected with the wharf or wharves so accepted and taken possession of, and in case there shall be no mooring piles, as above required, at the time of accepting and taking possession of said wharf or wharves as aforesaid, then said lessee shall cause said mooring piles to be driven and fastened at his costs, and shall keep the same in good repair during the whole of said term of four years and nine months.

That said John Baker, lessee, shall be bound, whenever ordered by the common council, to build all additional new wharves that may be necessary; and he shall further immediately cause to be constructed all wharves that may be necessary for the landing of flatboats.

152 That all works and repairs to be done by this contract, shall be done under the supervision of the surveyor and chairmen of the committees on streets and landings of the two boards of the common council; and in case of refusal on the part of said lessee to make all said works and repairs, it shall be the duty of the surveyor to have them made forthwith at the expense of said lessee.

That all works and repairs required to be done by this contract shall be done by said John Baker, lessee, after fifteen days' notice thereof is given by the surveyor.

That it is well understood that in case of neglect or failure by said John Baker, lessee, to commence or finish the works within the time mentioned in the orders of the surveyor, the common council shall have the right to annul this lease without putting the lessee in default as required by article 1,905 of the Civil Code, and without applying to a court of justice to annul the same, and without indemnity to such lessee; and it is also well understood that in case said

153 lessee should fail to make, or shall abandon, the repairs, the said lessee shall forfeit all notes he may have furnished to the city; and that the common council shall have the right to resell the revenues of said section for account and risk of said defaulting lessee and his sureties.

That the common council may revoke, set aside, and annul this contract whenever the said lessee shall neglect or fail to pay at maturity any note given in part payment of the purchase price of the aforesaid revenues; and thereupon the city may take immediate possession of the wharves, landings, and levees contained in the section herein sold, and proceed to collect the revenues collectable, within the same, or resell such section for the account and risk of said John Baker, as the council may deem proper.

That said lessee shall be furnished by the surveyor with an inventory of all spars, timbers, stage planks, &c., used for mooring vessels and for staging for vessels, and shall give to the surveyor a receipt for the same, and shall at all times keep on hand, for the use
154 of vessels, a sufficient supply of the same, and shall return to the city at the end of this lease an inventory of equal amount and value of the same.

That the said lessee and his securities shall in solido be responsible for all damages which may be claimed of the city by any party or parties who may sustain injury or damage in consequence of the neglect of the said lessee to comply with the requirements of this contract.

That all the aforesaid wharves, landings, and levees shall continue subject to the police regulations now governing the same and under existing ordinances, and no change shall be made without the consent of both parties; that all ship and other water crafts shall pay the dues collected under existing ordinances to the aforesaid lessee, in his section; and that in case of removal of any ship or water craft from one section to another, the dues so collectable shall be divided pro rata between the lessees of the section,in which steamboats, ships, or any other vessels may lie, according to the number of days said ship or vessel lie and be within the several sections.

155 That all that extent of the port of the first section, comprised between Toledano and Fifth, or Washington streets, and between Second and Felicity streets, be, and the same is hereby, appropriated as a landing for the shipping, and that all that extent of the port of the first section, comprised within Second and Fifth streets, is appropriated as a landing for flat boats.

And in order to come to a better and full understanding the contracting parties do further agree to carry out and execute in good faith this contract to all its intents and purposes, according to the terms, conditions, and speculations contained in ordinance No. 4,007 of the common council, entitled "An ordinance concerning the wharves of the city of New Orleans, and providing for farming the revenues thereof," and approved on the twenty-first June last, as well as if said ordinance was extended at length in the body of this act, a copy of the same being hereto annexed and signed ne varietur by the contracting parties, the undersigned witnesses, and notary, in order to be identified herewith.

This privilege is granted to the said John Baker for and in
156 consideration of the price and sum of one hundred and fifteen thousand dollars, in payment of which the said John Baker has furnished fifty-seven notes, dated this day, drawn by him to the order of and endorsed by W. N. Batson and C. A. Eager, and payable at the Louisiana State Bank, to wit:

Three notes of thirteen hundred and twenty-one dollars and eighty-four cents each ($1,321 84,) payable respectively on the first day of each of the three months of January, February, March, April, May, and June, eighteen hundred and fifty-nine.

Six notes of thirteen hundred and twenty-one dollars and eighty-four cents each, payable respectively on the first day of each of the

months of July, August, September, October, November, and December, eighteen hundred and fifty-nine.

Six notes of two thousand six hundred and forty-three dollars and sixty-seven cents each, payable respectively the first day of each of the months of January, February, March, April, May, and June, eighteen hundred and sixty.

157 Six notes of thirteen hundred and twenty-one dollars and eighty-four cents each, payable respectively on the first of July, August, September, October, November, and December, 1860.

Six notes of two thousand six hundred and forty-three dollars and sixty-seven cents each, payable respectively on the first day of January, February, March, April, May, and June, eighteen hundred and sixty-one.

Six notes of $1,321 84 each, payable respectively on the first of July, August, September, October, November, and December, 1861. (This reference approved.)

Six notes of two thousand six hundred and forty-three dollars and sixty-seven cents each, payable respectively on the first of January, February, March, April, May, and June, eighteen hundred and sixty-two.

Six notes of thirteen hundred and twenty-one dollars and eighty-four cents each, payable respectively on the first day of July, August, September, October, November, and December, eighteen hundred and sixty-two.

Five notes of two thousand six hundred and forty-three dollars and sixty-seven cents each, payable respectively on the first of January, February, March, April, and May, eighteen hundred and sixty-three.

158 And lastly, one note of two thousand six hundred and forty-three dollars and eighty-nine cents, payable on the first of June, eighteen hundred and sixty-three.

Which notes being signed ne varietur by the undersigned notary to identify them herewith, were handed to the said Gerard Stith, mayor, who acknowledges the delivery thereof.

And now personally intervened in these presents, Messrs. William Nichols Batson and Charles Austin Eager, both of this city, who having read what is above written, declared that they hereby guarantee to the city of New Orleans the faithful performance of the foregoing contract by the said John Baker, and bind themselves jointly and in solido in favor of the city of New Orleans in the sum of twenty-eight thousand seven hundred and fifty dollars, payable on demand to said corporation:

Now, the condition of the above written bonds or obligation is such that if the said John Baker shall well, truly, and faithfully perform and execute the present contract in accordance with the terms thereof, then the said bond to be null and void; but otherwise to be

159 and remain in full force and virtue, the said W. N. Batson and C. A. Eager hereby waiving the benefit of division and discussion granted by law to sureties.

Done and passed in my office the month, day, and year first above written, in presence of Paul E. Theard and Oscar Leblanc, competent witnesses, who have hereunto signed their names with the said parties and me, notary, after due reading of the foregoing.

(Original signed) JOHN BAKER.
(Original signed) WM. N. WATSON.
(Original signed) C. A. EAGER.
(Original signed) GERARD STITH, *Mayor.*
(Original signed) PAUL E. THEARD.
(Original signed) OSCAR LEBLANC.
(Original signed) E. BONNY, *Not. Pub.*

Correct: S. S. MITCHELL, *City Att'y.*

A true copy:
New Orleans, 18th September, 1858.
(Signed) E. BONNEY, *Not. Pub.*

Document 121.—*Laws of Louisiana.*

An act to amend an act entitled an act to amend an act entitled an act to consolidate the city of New Orleans, and to provide for the government of the city of New Orleans and the administration of the affairs thereof.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Louisiana in general assembly convened*, That section fourth, fifth, eight, and nine of an act entitled an act to amend an act entitled "An act to consolidate the city of New Orleans, and to provide for the government of the city of New Orleans, and the administration of the affairs thereof," approved March 20, 1856, which read as follows:

SECT. 4. *Be it further enacted, etc.*, That at the first sittings of the common council in 1856 the aldermen shall be divided by lot into two classes. The seats of the first class shall be vacated at the end of one year, and the seats of the second class shall be vacated at the end of two years: *Provided*, that one-half of the aldermen of each district shall constitute the first class, and at each annual elec-
161 tion after that of 1856 a sufficient number of aldermen shall be elected to fill the places of those going out.

SECTION 5. *Be it further enacted, etc.*, That at the first sitting of the common council in 1856 the assistant aldermen shall be divided by lot into classes. The seats of the first class shall be vacated at the end of one year, and the seats of the second class shall be vacated at the end of two years, (this reference app'd,) *Provided*, That seven of the assistant aldermen shall constitute the first class, and at each annual election after that of 1856 a sufficient number of assistant aldermen shall be elected to fill the places of those going out.

SECT. 8. *Be it further enacted, etc.*, That the election of mayor, controller, and street commissioner shall take place every two years, on the first Monday of June. The election of recorders shall take place

every two years, and of one class of the aldermen shall take place on the first Monday of June every year. The mayor, controller, and street commissioner shall be elected by general ticket, the recorders by the district ticket; and the mayor, controller, and street
162 commissioner, recorders, and aldermen shall enter upon the duties of their office on the third Monday of June following their election. The recorder's districts shall be the same as provided by section second of this act.

SECT. 9. *Be it further enacted, etc*, That the election of one class of assistant aldermen shall take place on the first Monday of June every year, and they shall enter upon the duties of their office on the third Monday of June following, shall be amended and re-enacted so as to read as follows:

SECT. 4. *Be it further enacted, etc.*, That at the first sitting of the common council in 1866 the aldermen shall be divided by lot into two classes. The seats of the first class shall be vacated at the end of one year, and the seats of second class shall be vacated at the end of two years: *Provided*, That one-half of the aldermen of each district shall constitute the first class, and at each annual election after that of 1866 a sufficient number of aldermen shall be elected to fill the places of those going out.

163 SECT. 5. *Be it further enacted, etc.*, That at the first sitting of the common council in 1866 the assistant aldermen shall be divided by lot into two classes. The seats of the first class shall be vacated at the end of one year, and the seats of the second class shall be vacated at the end of two years: *Provided*, that seven of the assistant aldermen shall constitute the first class, and at each annual election after that of 1866 a sufficient number of assistant aldermen shall be elected to fill the places of those going out.

SECT. 8. *Be it further enacted, etc.*, That the election of mayor, controller, and street commissioner shall take place every two years on the second Monday of March. The election of recorders shall take place every two years, and of one class of the aldermen shall take place on the second Monday of March every year. The mayor, controller, and street commissioner shall be elected by general ticket, the recorders by district ticket, and the mayor, controller, and street commissioner, recorders and aldermen shall enter upon the
164 duties of their office on third Monday of March following their election. The recorder's district shall be the same as provided by section second of this act.

SECT. 9. *Be it further enacted, etc.*, That the election of one class of assistant aldermen shall take place on the second Monday of March of every year, and they shall enter upon the duties of their office on the third Monday of March following.

SECT. 2. *Be it further enacted, etc.*, That all laws or parts of laws contrary to this act be, and they are hereby, repealed.

SECT. 3. *Be it further enacted, etc.*, That this act take effect from and after its passage.

(Signed) DUNCAN S. CAGE,
Speaker of the House of Representatives.

(Signed) ALBERT WOORHIES,
Lieut. Governor and President of the Senate.

Approved February 26, 1866.

(Signed) J. MADISON WELLS,
Governor of the State of Louisiana.

A true copy:

(Signed) J. H. HARDY,
Secretary of State.

165 *Order continuance, from the minutes June 16th, 1866.*

NEW YORK MAIL STEAMSHIP COMPANY
vs.
THE CITY OF NEW ORLEANS. } No. 3,852.

This cause was resumed, all the counsel engaged being present, and after hearing further evidence and argument, the cause is continued until Monday next at 11 a. m.

Note of evidence, filed June 18th, 1866.

NEW YORK MAIL STEAMSHIP COMPANY
vs.
THE CITY OF NEW ORLEANS. } No. 3,852.

Defendant offered certified copy of wharfage ordinance 122; also, correspondence 123, 124, 125.

166 *Document* 122.

No. 640.

MAYORALTY OF NEW ORLEANS,
City Hall, day of , 186 .

An ordinance to regulate the Levee dues and wharfage on ships and vessels arriving from sea, and on steamboats, flat boats, &c., arriving at the port of New Orleans:

ART. 1st. *Be it ordained by the Common Council of the city of New Orleans*, That from and after the 1st of January, 1853, the levee or wharfage dues on ships, and other decked vessels, and steamships arriving from sea, shall be fixed as follows: On all vessels of 1,000 tons and under, twenty cents per ton; and excess of tonnage over 1,000 tons, fifteen cents per ton. On all steamships navigating the Gulf of Mexico or the ocean, fifteen cents per ton.

ART. 2d. *Be it further ordained*, That from and after the 1st of January, 1853, the levee dues on all steamboats which shall moor or land

in any part of the port of New Orleans, shall be fixed as fol-
167 lows: Ten cents per ton if in port not over five days, and five dollars per day after said five days shall have expired: *Provided*, that boats arriving and departing more than once in each week shall pay only seven cents per ton each trip.

ART. 3d. *Be it further ordained*, That from and after the 1st January, 1853, the levee dues on flatboats, barges, &c., fully or part laden with produce, materials, or merchandize of any kind, shall be as follows: Flatboats not measuring more than eighty feet, eight dollars; eighty to one hundred feet, ten dollars; on each barge measuring less than seventy feet, and not over twenty tons, eight dollars; on each steamboat hull used as a barge, twenty-five dollars; on each scow or coasting pirogue, two dollars.

ART. 4th. *Be it further ordained* That so much of all existing ordinances as are inconsistent with the provisions of this ordinance, be and are hereby repealed.

(Signed) W. C. C. CLAIBORNE,
President Board of Aldermen.

168 (Signed) FRANS. ALPUENTE,
President Board of Assistant Aldermen.

Approved February 11th, 1863.

(Signed) A. D. CROSSMAN,
Mayor.

A true copy, attest:

(Signed) THEO. MARKS, [SEAL.]
Secretary.

Document 123.

HEADQUARTERS DEPARTMENT OF LOUISIANA,
New Orleans, La. August 23d, 1865.

Hon. HUGH KENNEDY,
Mayor of New Orleans, New Orleans, La.

SIR: I am instructed by the major general commanding, to notify you that the levee and wharf space hereafter described, has been selected and reserved for military purposes, and will not be included in any arrangements that may be made by the city authorities for leasing the levees and wharves.

169 1st. The levee and wharf space between Nun and Jackson streets.

2d. 300 feet front from custom-house office landing to Canal-street ferry landing, 120 feet deep from bank of the river, and situated between Crossman and Canal streets.

3d. Between 1st and 4th streets.

4th. For about four weeks the use of posts 26, 27, and 28 will be required.

5th. So long as the St. Joseph-st. railroad is run by the U. S., the levees and wharves between Julia and Lafayette streets, and the space occupied by the railway and depot along the entire levee and covered by the railway.

The same rule will apply to any wharf or levee space that is occupied by the Navy or Treasury departments.

The major general has learned that the city authorities contemplate the alienation of this property for a long term of years, and he thinks it proper to suggest for your consideration, the fact, that the title to all this property is in the United States as captured.

The authorities of the government have conceded to the
170 city the occupation, use, and profits of so much of it as is not required for public purposes, but the title by capture has not yet, so far as he has been advised, been relinquished by the Executive department of the general government, and until that is done, any leases or other disposition of this property should be for a short period.

I am further instructed to say, that the commanding general has learned only by accident of the action contemplated by the city authorities, and that he desires that any future action that may be contemplated by the city authorities in which the interests of the United States are directly or indirectly involved, be seasonably reported for action here, or be submitted to the proper authorities at Washington.

Very respectfully, your ob't servant,

(Signed) GEO. L. ANDREWS,
Brig. General Chief of Staff.

A true copy:

(Signed) DE WITT CLINTON,
Brevet Lieut. Colonel, Judge Advocate.

171 *Document* 124.

STATE OF LOUISIANA, MAYORALTY OF NEW ORLEANS,
City Hall, 24th day of Aug., 1865.

Maj. Gen'l E. R. S. CANBY,
Comd'g Dept. of Louisiana.

GENERAL: Late last evening, I had the honor to receive at my dwelling, a communication from Brig. Gen'l Geo. L. Andrews, chief of staff, written by your order, in relation to the leasing of the steamboat wharves by the city authorities, which the order in question inhibits on several grounds, viz:

1st. That such portions of the wharves in question as may be required by the Army, Navy, and Treasury departments of the national government must be reserved for their use.

2d. That the leases if made, should be for a shorter period than ten years.

3d. That the title to all this property is in the United States as captured.

I had not the slightest idea, general, in advertising this im-
172 portant property for lease, as one of a number of comprehensive measures which I had designed for, and which in my opinion are indispensable to the extrication of this city from its bankrupt condition, that I was either dealing with that which was not the city's, or infringing upon any space regarded by the departments

named above as absolutely necessary for the public service. Had I been so aware, your present order would not have been requisite.

By estimates of the proper municipal officers, two hundred thousand dollars are now demanded to make the wharf accommodation of this city suitable to the demands of its commerce. This it is needless for me to tell the commanding general, is not to be found in the empty treasury of this corporation, nor indeed can I discover how the innumerable demands upon the latter are to be met, when the tax payers who are in default from one to four years can be counted by thousands; the most valuable property is seized and held by the Treasury and other agents, and the only other legitimate expedients that are
173 desirable for escape from this state of affairs are declared incompatible with the military situation here.

One of two courses, with all proper deference and respect, I would suggest as reasonable, namely, either to place the sources of revenue I have enumerated in the hands of the local authorities, to be held subject to a final arbitrament, or to leave them entirely in the control of federal authority, the government advancing the means to keep them from great damage or permanent annihilation.

This view was the one entertained by Maj. General Hulburt, when he held command here, and if accomplished, its correctness, will, I think be conceded.

While I cannot, general, do otherwise, in view of the best interests of New Orleans, than deeply regret the military necessity which impels me to cancel the sale of the receipts from wharfage which had been made, I have the additional pain caused by what I cannot but believe will be the President's disappointment, as he months ago, expressed his intention of having the just claims of this city
174 against the various departments of government promptly and satisfactorily adjusted.

I have the honor to be, general, your very respectfully your ob't servant,

(Signed) HU. KENNEDY, *Mayor.*

A true copy:

(Signed) DE WITT CLINTON,
Brevet Lieut. Colonel, Judge Advocate.

Document 125.

MAYORALTY OF NEW ORLEANS,
City Hall, 6th day of Sept., 1865.

Maj. Gen'l E. R. S. Canby, com'd'g department of La.:

GENERAL: Your communication of the 4th instant, received yesterday, I have the honor to acknowledge.

Your determination to submit to the War Department certain matters likely to be affected by the leasing of the wharf property
175 of this city, as proposed by the city government, necessarily terminates and cancels, for the present and indefinitely, the adjudication already made. The time that must elapse before it will

be possible for the War Department to come to any conclusion on your recommendations will be so long that I am compelled to adopt one of two alternatives, namely: either to allow the wharves to fall into utter ruin and thereby destroy all the facilities now given to commerce at this port, or at once set about making the indispensable reparations and constructions. The last I have endeavored to avoid; for it will cost, by estimate, a quarter of a million of dollars, and this sum can only be provided by the dangerous expedient of increasing the floating debt, now exceeding twenty-seven hundred thousand dollars.

By the best computation I have been able to make, the annual loss to the city from the present mode of managing the wharves cannot be less than two hundred thousand, and probably may reach three hundred thousand dollars. My plan would have secured better
176 and cheaper accommodation to shipping; and instead of the city losing the enormous sum above stated, it would, without the expenditure of a dime, that in the annual receipt of one hundred and fifty thousand dollars. I am not aware, nor have I heard of any single citizen of intelligence to dispute my views, or to deprecate their adoption. On the contrary, they have commanded themselves to the approval of every candid and sensible mind, and they have obtained it. My financial plan for the coming year embraced the saving here indicated, and with the direct and regular income I had a right to calculate upon as almost certain to accrue from the sale of street railroad privileges, which I estimated as equal to half a million dollars; to which, if we add the reduction of expense in the street commissioner's department, in the police, and other savings made and practicable, without diminishing efficiency, I was sanguine of being able to economize in outlays at least one million of dollars, and to diminish the burdens upon industry proportionally next year.

177 I deeply regret, both on account of people and government, that you felt compelled to scatter these financial plans to the winds by interposing insuperable obstacles to their realizations.

I, however, quite agree with you, general, as every one else does, that the government is not responsible for the bankrupt condition of the city treasury; and I beg to correct what must be unintentional mistake in your letter, wherein you erroneously allege that in my correspondence with you "I cast a reproach" upon its officers and agents of this character. As to the plunder of both State and city treasuries, I believe all are agreed. Who the guilty are the government, I doubt not, is fully and correctly advised. Your reference to my letter to the President in relation to the surrender of the New Orleans and Jackson, and New Orleans and Opelousas railroads to their stockholders, makes it proper for me to say that in these railroad affairs, as in everything else, I have faithfully and undeviatingly adhered to the verbal instructions given me by the President.

When I found that the military authorities had surrendered
178 the New Orleans and Jackson railroad to its old direction, who had run it in rebel interests for four years, and never

rendered any account, and all of whom, with two exceptions, were strangers to, or fugitives from, the State, and hostile to the government, I regretted it, as it made an embarrassment I have not been able to surmount in carrying out the President's wishes, namely: that new directors of reliably loyal sentiments should be elected before a transfer of the roads in question was made. I proceeded to have the elections thus required by the President; I reported my proceedings, step by step, to him; and I have, with the profound respect I entertain for him, left the decision to him of the question whether an uncondoned rebel could be elected president of the New Orleans and Jackson railroad, with associates such as the directors are known to be, or not. I do not, general, impertinently intrude my opinions upon the government. I report my conduct and my acts uncolored for its approval or censure, if the latter is merited, and await with perfect confidence its decision.

Even when assailed by the buffoonery of a journal which
179 only has a recognized place from a presumed connection with the military authorities of this department, I made no complaint, nor, frequently as my exertions to improve the administration of this city have been abruptly forbidden, have I questioned the motive. If I was pained by the action of the military authorities, I thought that an officer, however humble, who had been honored by the President with the responsible and exalted trust of the chief magistracy of this place, was entitled to, at least, respectful consideration, and that a rude or contumelious nullification of acts of his, which had caused him many anxious and restless honors, could only embolden the enemies of order and unity, and gladden schismatics, whose only study is how to plunder successfully and damage the Union.

Sincerely regretting, general, my inability to make the administration of my charge agreeable to you, and yet to be in conformity with my instructions from the President, and reiterating my assurance that nothing shall swerve me from the course prescribed
180 to me by the latter in even the smallest particular,

I have the honor to be, general, very respectfully, your obedient servant,

(Signed) HU. KENNEDY, *Mayor*.

A true copy:

(Signed) DE WITT CLINTON,
Brevet Lieutenant Colonel, Judge Advocate.

Order continuance, from the minutes 18 *June,* 1866.

NEW YORK MAIL STEAMSHIP COMPANY
vs.
THE CITY OF NEW ORLEANS. } No. 3,852.

This cause was resumed, all the counsel being present,

And after hearing further evidence and argument, the cause is continued until to-morrow at 11 a. m.

181 *Order continuance, minutes of June 19th, 1866.*

NEW YORK MAIL STEAMSHIP COMPANY
vs.
THE CITY OF NEW ORLEANS. } No. 3,852.

This cause was resumed, all the counsel engaged being present, And after hearing further argument, the cause is continued until to-morrow at 11 a. m.

Order continuance, from the minutes of June 20, 1866.

NEW YORK ML. STEAMSHIP CO.
vs.
THE CITY OF NEW ORLEANS. } No. 3,852.

This cause was resumed, all the counsel engaged being present, And after hearing further argument, the cause is continued until to-morrow at 11 o'clock, a. m.

182 *Submission of cause.—Minutes of June 21, 1866.*

NEW YORK MAIL STEAMSHIP COMPANY
vs.
THE CITY OF NEW ORLEANS. } No. 3,852.

This cause was resumed, and after hearing the closing argument of plaintiff's counsel the court took time to advise.

Judgment from Judgment Docket No. 5, page 16.

Circuit court of the United States, sixth circuit and eastern district of Louisiana.—April term, 1866.

NEW ORLEANS,
Saturday, June 30, 1866.

Court met pursuant to adjournment. Present: The Hon. I. H. Durell, district judge.

NEW YORK MAIL STEAMSHIP CO.
vs.
THE CITY OF NEW ORLEANS. } No. 3,852.

183 For reasons orally assigned, it is ordered, adjudged, and decreed that the injunction herein sued out be maintained and held in force during the term of ten years from the 8th day of July, 1865, and that the city of New Orleans, her agents, and officers, and employes be prohibited and restrained, during the said period, from interfering with or disturbing the plaintiffs in the quiet and exclusive possession of the premises described in the petition, and in the contract of lease on file.

rendered any account, and all of whom, with two exceptions, were strangers to, or fugitives from, the State, and hostile to the government, I regretted it, as it made an embarrassment I have not been able to surmount in carrying out the President's wishes, namely: that new directors of reliably loyal sentiments should be elected before a transfer of the roads in question was made. I proceeded to have the elections thus required by the President; I reported my proceedings, step by step, to him; and I have, with the profound respect I entertain for him, left the decision to him of the question whether an uncondoned rebel could be elected president of the New Orleans and Jackson railroad, with associates such as the directors are known to be, or not. I do not, general, impertinently intrude my opinions upon the government. I report my conduct and my acts uncolored for its approval or censure, if the latter is merited, and await with perfect confidence its decision.

Even when assailed by the buffoonery of a journal which
179 only has a recognized place from a presumed connection with the military authorities of this department, I made no complaint, nor, frequently as my exertions to improve the administration of this city have been abruptly forbidden, have I questioned the motive. If I was pained by the action of the military authorities, I thought that an officer, however humble, who had been honored by the President with the responsible and exalted trust of the chief magistracy of this place, was entitled to, at least, respectful consideration, and that a rude or contumelious nullification of acts of his, which had caused him many anxious and restless honors, could only embolden the enemies of order and unity, and gladden schismatics, whose only study is how to plunder successfully and damage the Union.

Sincerely regretting, general, my inability to make the administration of my charge agreeable to you, and yet to be in conformity with my instructions from the President, and reiterating my assurance that nothing shall swerve me from the course prescribed
180 to me by the latter in even the smallest particular,

I have the honor to be, general, very respectfully, your obedient servant,

(Signed) HU. KENNEDY, *Mayor*.

A true copy:

(Signed) DE WITT CLINTON,
Brevet Lieutenant Colonel, Judge Advocate.

Order continuance, from the minutes 18 *June*, 1866.

NEW YORK MAIL STEAMSHIP COMPANY
vs.
THE CITY OF NEW ORLEANS. } No. 3,852.

This cause was resumed, all the counsel being present,

And after hearing further evidence and argument, the cause is continued until to-morrow at 11 a. m.

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NEW YORK MAIL STEAMSHIP COMPANY
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THE CITY OF NEW ORLEANS. } No. 3,852.

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NEW YORK MAIL STEAMSHIP COMPANY
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THE CITY OF NEW ORLEANS. } No. 3,852.

This cause was resumed, and after hearing the closing argument of plaintiff's counsel the court took time to advise.

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NEW ORLEANS,
Saturday, June 30, 1866.

Court met pursuant to adjournment. Present: The Hon. I. H. Durell, district judge.

NEW YORK MAIL STEAMSHIP CO.
vs.
THE CITY OF NEW ORLEANS. } No. 3,852.

183 For reasons orally assigned, it is ordered, adjudged, and decreed that the injunction herein sued out be maintained and held in force during the term of ten years from the 8th day of July, 1865, and that the city of New Orleans, her agents, and officers, and employes be prohibited and restrained, during the said period, from interfering with or disturbing the plaintiffs in the quiet and exclusive possession of the premises described in the petition, and in the contract of lease on file.

It is further ordered, adjudged, and decreed, that the plaintiffs do recover from the city of New Orleans the sum of eight thousand dollars as damage and costs of suit.

And it is further ordered and decreed that, on the rule for a contempt of court, George Clarke, late acting mayor of the city of New Orleans, be condemned to pay a fine of three hundred dollars, which shall be deposited in the United States treasury.

Judgment rendered June 30, 1866.

Judgment signed June 30, 1866.

(Signed) E. H. DURELL, *Judge.*

184 *Bill of exceptions, filed July 5th, 1866.*

NEW YORK MAIL STEAMSHIP COMPANY *vs.* THE CITY OF NEW ORLEANS. } No. 3,852.

Be it remembered that on the trial of this cause in the circuit court of the United States for the sixth circuit and eastern district of Louisiana, defendant, by counsel, offered in evidence the documents hereto annexed, and made part of this bill of exception, being "General Order, No. 11," dated "headquarters, department of Louisiana, New Orleans, La., February 9th, 1866," and signed "by order of Major General E. R. S. Canby, Wickham Hoffman, assistant adjutant general."

To the reception of which document, as evidence, plaintiff, by counsel, objected on the ground that said General Order, being made subsequently to the lease from the mayor to plaintiff mentioned in the petition, was an interference which vested rights of plain-
185 tiff, and was therefore inadmissible; and the court sustained the objection, and rejected the said General Order as evidence in the cause.

And defendant by consent excepted to the ruling of the court, rejected said evidence as erroneous in law, for this, that the mayor of New Orleans, or acting mayor, Hugh Kennedy, who made the lease of the 8th June, 1865, to defendant, was acting under the military authority of the United States; that the city of New Orleans was then governed by martial law, and had been so since May, 1862, and continued to be so until March, 1866; that during all said period of time the constitution and the civil laws were and remained superceded and inoperative in New Orleans, the will of the commanding general of the department being the supreme law therein; that Major General E. R. S. Canby, of the United States army was the commanding general of the military department of Louisiana, (in which New Orleans was comprised,) on the 9th February, 1866.

And be it further remembered that on the trial of this case,
186 and after J. M. Courtenay, a witness called by plaintiff, had been examined, and had testified that plaintiffs had entered at New Orleans custom-house, in the year ending April 30, 1866, seventy-five steamers, of which the aggregate tonnage was 139,181 tons, and had given evidence as to the whole tonnage arriving at the

port of New Orleans from coastwise and foreign ports; and evidence tending and designed to show that the city derived great benefit and advantage from the contract with plaintiffs; and after plaintiffs had closed their evidence, defendant offered to prove by John T. Monroe and George Clarke, witnesses sworn in the cause, that the wharfage and levee dues of the steamers, entered by plaintiff at the New Orleans custom house in the year ending April 30, 1866, if charged according to the rates fixed by the city ordinances, would have amounted to twenty-three thousand six hundred and forty-three dollars, and to contradict the statements made by the witness, J. M. Courtenay, above mentioned; but counsel for plaintiff objected
187 to the exception of the evidence of said Monroe and Clark upon the points above stated on the ground that said evidence was irrelevant and inadmissible, which objection was sustained by the court, and the evidence rejected, and defendant by counsel, excepted to the ruling of the court; rejected said evidence as erroneous in law for this, that this being an action sounding in damages for a tort, it is competent for defendant to offer all evidence to contradict and explain the testimony of witnesses or plaintiffs, and to mitigate damages.

3. And it is further remembered that, on the trial of this case, the counsel of plaintiffs, then on the stand, to state to the court what was the custom in New York and other large cities as to the leasing their wharves. To which question, defendant, by counsel, objected on the ground that it was irrelevant; that the defence, in this case, was based upon the peculiar law of Louisiana; but the court overruled the objection, and allowed the question to be answered.

To which ruling of the court, defendant, by counsel, excepted as erroneous in law for this, that the customs or even the laws of other countries cannot control the laws of property and contracts in
188 Louisiana bearing upon parties and objects exclusively within that State.

And the defendant thereupon in open court, and before the trial had concluded, tendered to the presiding judge this his bill of exceptions to the three several rulings of the court above related, and respectfully requested his honor to sign and seal the said bill, which was done in open court and during the trial this 18th day of June, 1866.

(Signed) E. H. DURELL, *Judge.*

Petition for writ of error, filed July 5th, 1866.

NEW YORK MAIL STEAMSHIP COMPANY
vs.
THE CITY OF NEW ORLEANS. } No. 3,852.

To the honorable circuit court of the United States for the sixth cir- and eastern district of Louisiana:

The petition of the city of New Orleans, defendant herein, respectfully shows that it is aggrieved by the final judgment rendered

189 herein against it in the suit of the New York Mail Steam ship Company *vs.* The City of New Orleans, numbered 3,852, on the docket of this court, and is informed there is error to its prejudice, and is desirous that a writ of error be allowed it therefrom to the Supreme Court of the United States.

Wherefore petitioner prays that a writ of error be allowed it, returnable to the next term of the Supreme Court of the United States, and that the same may operate as a supersedeas, upon its giving bond with good and sufficient surety in such sum as the court may direct and order.

And as in duty bound, &c.

(Signed) BUCHANAN & GILMORE,
Att'y of Petitioner.

Let a writ of error be allowed as a supersedeas as to the damages, on petitioner giving bond with good and sufficient security in the sum of ten thousand dollars.

July 5th, 1866.

(Signed) E. H. DURELL, *Judge.*

190 *Bond for Writ of Error, filed July 5th,* 1866.

Know all men by these presents, that we, the city of New Orleans, as principal, and Williamson Smith and Francis Surges, as sureties, are held and firmly bound unto the New York Mail Steamship Company in the full and just sum of ten thousand dollars, to be paid to the said New York Mail Steamship Company, its certain attorney, executors, administrators, or assigns, to which payment well and truly to be made we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this fifth day of July, in the year of our Lord one thousand eight hundred and sixty-six.

Whereas, lately at a circuit court of the United States, sixth judicial circuit, holding sessions in and for the eastern district of Louisiana, in a suit depending in said circuit court, wherein the New York Mail Steamship Company is plaintiff and the city of New Orleans is defendant, No. 3,852 of the docket of said court, judgment was rendered against the said city of New Orleans, defendant, and the said city of New Orleans having obtained a writ of error, and filed a copy thereof in the clerk's office of the said circuit court, to reverse the judgment in the aforesaid suit, and a citation directed to the said New York Mail Steamship Company, citing and admonishing it to be and appear at a Supreme Court of the United States to be holden at Washington the first Monday of December next:

Now, the condition of the above obligation is such that if the said city of New Orleans shall prosecute it writ to effect, and answer all damages and costs if it fail to make its plea good, then the above obligation to be void, else to remain in full force and virtue.

(Signed) JOHN T. MONROE, *Mayor.* [L. S.]
WILLIAMSON SMITH. [L. S.]
FRANCIS SURGESS. [L. S.]

Sealed and delivered in the presence of—

The above bond is approved and the sureties accepted in the sum of ten thousand dollars.

Signed) E. H. DURELL, *Judge.*

191 Filed July 5, 1866.

——— ———, *Clerk.*

[25-cent rev. stamp affixed and cancelled.]

192 *Statements of facts agreed by counsel of Pl'ff and def'ts July 5th, 1866, to serve on trial in error, filed July 7th, 1866.*

United States circuit court, sixth circuit, and eastern district of Louisiana.

NEW YORK MAIL S. S. Co. *vs.* THE CITY OF NEW ORLEANS. } No. 3,852.

The following is a statement of facts proved in this case on trial in the circuit court:

1st. On the first May, 1862, the army of the United States captured and occupied the city of New Orleans, and Major General Butler published the proclamation hereto annexed and marked Exhibit "A," since which time the public property has been administered by the United States military authorities down to the time of issuing General Orders number 26, referred to in paragraph numbered sixth.

2. On the 27th June, 1862, Major General Butler approv-
193 ing, General Shepley, military commandant of New Orleans, organized a provisional municipal government for New Orleans by the order No. 17—hereto annexed and marked Exhibit "B."

3. The bureaus of finance and of streets and landings and the mayor, appointed under military authority, exercised general administrative municipal powers and legislated on all subjects pertaining to the municipal government of New Orleans. This action was known to the successive military commanders of the department of the Gulf from May 21, 1862, to March 16, 1866. (See admissions of counsel hereto annexed and marked Exhibit "C.")

4. Captain Miller, military mayor under resolutions of the two bureaus, constituted by military authority, leased on the 9th January, 1864, to the plaintiffs, a certain portion of the bank of the river Mississippi in front of the city of New Orleans for a landing for their vessels for the term of five years. (See lease and resolutions
194 hereto annexed and marked Exhibit "D.")

5. Hugh Kennedy, esq., military mayor of New Orleans under resolutions of the two bureaus constituted by military authority, leased to plaintiffs, on the 8th July, 1865, for the term of ten years, a portion of the bank of the river Mississippi, in front of the city, for their exclusive use, qualified by paragraph seven of the lease. (See the license and the resolutions hereto annexed and marked Exhibit "E.")

6. The municipal administration of the city of New Orleans was transferred on the 18th March, 1866, by the military authorities of the United States to a mayor and council elected by the citizens under the act of the legislature of Louisiana, 1856, known as the city charter. (See the order of Major General Canby, No. 26, dated 18 March, 1866, hereto annexed and marked Exhibit "F.")

7. Major General Canby, commanding this military department, having been applied to by plaintiff to approve the building of
195 a wharf by plaintiffs refused to do so. (See General Canby's endorsement of J. M. Courtenay's application, dated September 15, 1865, hereto annexed and marked Exhibit "G.")

By the correspondence between the mayor and General Canby introduced in evidence, it appeared that General Canby based his refusal upon the ground that the levees were in the custody of the military authorities as captured property, and that, therefore, the city could not grant rights upon them as against the United States until they had been by order of the Executive restored to the city.

8. The city surveyor, aided by a large number of laborers in the pay of the city, and acting under a resolution of the common council, approved by the mayor, demolished and destroyed, on the 18th April, 1866, the fence or enclosure, erected by the plaintiffs at a cost of seven thousand dollars, around the premises leased to them by Mayor Kennedy. (See the resolutions of the council, approved by the mayor April 12th, 1866, hereto annexed and marked Exhibit "H.")

196 9. Plaintiffs sued out of this court in this suit a writ of injunction, prohibiting defendants from disturbing their buildings and enclosures upon the premises leased, which writ of injunction was served upon defendants after the enclosure around said premises had been destroyed. (See the record herein.)

10. The city of New Orleans, by its acting mayor, presented a petition to the third district of New Orleans, a State court of the State of Louisiana, praying an injunction to prohibit plaintiffs from rebuilding the enclosure around the premises leased which had been destroyed. And a writ of injunction was issued by said court on the 21st day of April, in conformity to the prayer of said petition, which injunction was served upon plaintiffs. (See a copy of said petition for injunction, bond, and writ of injunction, hereto annexed and marked Exhibit "I.")

11. Plaintiff presented and filed in this court in this suit a supplemental petition praying for an injunction to restrain the de-
197 fendants from prosecuting the suit instituted by the city in the third district court of New Orleans above mentioned, and also from instituting any other action or proceeding which shall interfere with the exclusive use of the premises leased aforesaid by plaintiffs. And said writ of injunction was issued by this court in conformity to the prayer of plaintiffs, supplemental petition, which was served upon the mayor of New Orleans. (See the record herein.)

12. Plaintiffs furnished their notes, one hundred and twenty in number, for $666 66 each, for the rent of the premises under the lease of

eighth July, eighteen hundred and sixty-five, said notes falling due on the eighth, eleventh, each month, from August eighth, eighteen hundred and sixty-five to July eighth, eighteen hundred and seventy-five. The first nine of these notes were paid at maturity. The ninth, due April 8th, 1866, was paid on the 11th April, 1866, to the present city administration, elected under the charter, to whom all
198 the other notes not yet due at that date, one hundred and eleven in number, has been turned over at the transfer of the city administration from the military authority as above said. Those one hundred and eleven notes have been deposited by defendants in court, subject to the order of plaintiffs, and so remain deposited. (See records herein, also rent note hereto annexed and marked Exhibit "K.") Those one hundred and eleven notes retained by the defendants until some months after the action was brought, when when they were tendered to plaintiff by supplemental answer. No tender was made of the money paid on the last note, nor was any reimbursement offered to plaintiff for the money expended in building the wharf or other improvements.

13. Defendant offered in evidence an order of Major General Canby, commanding this military department, No. 11, dated February 9th, 1866, which is hereto annexed and marked Exhibit "L," which was rejected by the court and an exception reserved by de-
199 fendants to such rejections. (See bill of exceptions on file.)

14. From the acception of the lease down to the 18th day of April, A. D. 1866, the plaintiffs had remained in peaceable possession of the demised premises, had performed all their obligations under the lease, and had, in accordance with the terms of the lease, erected a wharf and sheds, etc., at an expense of upwards of sixty-five thousand dollars. No notice was given to plaintiff of the demolition, and it was performed early in the morning.

15. Under its charter of 1856 the city of New Orleans had before the war leased portions of its wharfs to individuals and companies, and had, in one instance, farmed out the collection of the levee dues upon the entire wharves by sections.

16. The damages resulting from the destruction of the plaintiff's buildings, etc., and the necessary employment in consequence
200 of this destruction, of additional watchman, amounts to eight thousand dollars

(Signed) SULLIVAN BILLINGS & HUGHES.
Att'ys for Plaintiffs.

(Signed) BUCHANAN & GILLMORE,
Att'ys for Defendant.

Documents annexed to statement of facts.—Exhibit A.

Proclamation of General Butler, being document transcribed at page 94, under heading of document 103.

Statement of facts, exhibit B, being order of General Shepplev, approved by General Butler, June 27th, 1862, being document N, transcribed at page No. 65.

Statement of facts, exhibit C, being "admission," transcribed at page No. 90.

Statement of facts, exhibit D, being a "lease of wharf," transcribed at page 129, being document 120.

201 Statement of facts, exhibit E, "being a lease by the city of New Orleans to the New York Mail Steamship Company," being document C, transcribed at page 6.

Statement of facts, exhibit F, being an order of General Canby, 18th March, 1866, transcribed at page 112, being document 111.

Statement of facts, exhibit G, being document 108, transcribed at page 109.

Statement of facts, exhibit H, being document 117, transcribed at page 119.

Statement of facts, exhibit I, petition to the third district court by the city of New Orleans, is transcribed at page 43 of this transcript.

202 Statement of facts, exhibit K, being document E transcribed at page 57.

Statement of facts, exhibit L, order of General Canby, Headquarters Department of Louisiana, Feb'y 9th, 1866, prohibiting the municipal government of New Orleans, created by military authority, from alienating or disposing for a time longer than the military government of the city shall ensure, any property or franchises of the city—109 ruled out.

Exhibit L.

General Orders No. 11.

HEADQUARTERS DEPARTMENT OF LOUISIANA.
New Orleans, La., February 9, 1866.

The several bureaux of the municipal government of the city of New Orleans, created by, and acting under military authority, are enjoined and prohibited from alienating, or in any manner disposing of the real estate, or other property belonging to the city, or
203 granting any franchise or right to corporations, or individuals, for a term extending beyond such period as the civil government of the city may be reorganized and re-established under and in conformity to the constitution and laws of the State; and any alienation, disposition or grant will be subject to any rights and interests of the general government which may be involved, and shall not extend beyond the time when the questions relative to those rights and interests may be determined by competent authority.

By order of Major General E. R. S. Canby.

(Signed) WICKHAM HOFFMAN,
Assistant Adj't General.

Official:

(Signed) NATHANIEL BURBANK,
Acting Assistant Adj't General.

204 *Additional facts, filed July 9th*, 1866.

U. S. circuit court.

N. Y. M. S. S. Co.
vs.
THE CITY OF NEW ORLEANS. } Additional facts.

The commerce passing through and represented by the plaintiff during the year ending April 30, 1866, was one-sixth of the commerce of the city. The number of consignees, sixty-six thousand. During the busy season two vessels arrive and depart per week, bringing and carrying from eight to twenty thousand packages each.

It is unpracticable without great additional expense to protect this commerce without an enclosure. The length of the levee accessible to the commerce of New Orleans is seven miles. No more room was assigned under the lease than the company require for the commerce which they represent.

Approved:

(Signed) E. H. DURELL, *Judge.*
(Signed) BUCHANAN & GILMORE, *For Def'ts.*

205 United States of America, circuit court of the United States, fifth circuit and district of Louisiana.

CLERK'S OFFICE.

I, Charles Claiborne, clerk of the circuit court of the United States, for the fifth circuit and district of Louisiana, do hereby certify, that the foregoing 204 pages contain and form a full, complete, true, and perfect transcript of the record and proceedings had, together with all the evidence adduced on the trial of the case of the New York Mail Steamship Company *vs.* the city of New Orleans, No. 3,852 of the docket, so far as the same now remain of record or on file in said court.

Witness my hand and the seal of said court, at the city of New Orleans, this 3d day of November, A. D. 1866.

[SEAL.] CHS. CLAIBORNE, *Clerk.*

[U. S. Int. rev. stamp, 5 cts., cancelled]

I, E. H. Durell, United States Judge for the district of Louisiana, do hereby certify, that Charles Claiborne, whose name is signed to the above certificate as clerk of the circuit court of the United States for the fifth circuit and district of Louisiana, was, at the time of signing said certificate, and is now, the clerk of said court; that said certificate is in due form of law, and that full faith and credit are due to his official attestations as such clerk.

Given under my hand and seal, at the city of New Orleans, in said district, this 3d day of November, A. D. 1866.

[SEAL.] E. H. DURELL, *Judge.*

[U. S. 5-ct. rev. stamp, cancelled.]

206 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable judges of the circuit court of the United States in and for the sixth circuit, and holding sessions for the eastern district of Louisiana, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you, or one of you, between the New York Mail Steamship Company, plaintiff, and the city of New Orleans, defendant, a manifest error hath happened, to the great damage of the said city of New Orleans, defendant, as by its complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court, to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness, the honorable Salmon P. Chase, Chief Justice of the said Supreme Court of the United States, this fifth of July, in the year of our Lord one thousand eight hundred and sixty-six.

[SEAL.] CHS. CLAIBORNE,
Clerk of the United States Circuit Court for Eastern District of Louisiana.

207 THE UNITED STATES OF AMERICA,
Eastern District of Louisiana.

The President of the United States to the New York Steamship Company, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the city of Washington on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the sixth circuit and eastern district of Louisiana, wherein the city of New Orleans is plaintiff in error, and you are defendant in error, to show cause if any there be, why the judgment rendered against the said city of New Orleans as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, this fifth day of July, in the year of our Lord one thousand eight hundred and sixty-six.

E. H. DURELL, *Judge.*

Marshal's return.

Received July 6th, 1866, and on the same day, month and year, served a copy of the within citation in error on the New York Mail Steamship Company, named herein as defendant in error, by giving the same into the hands of J. M. Courtenay, personally, agent for said company, at their office No. 33 Carondelet street in this city.

M. EGAN,
D'y U. S. Marshal.

New Orleans, July 6, 1866.

Supreme Court of the United States.

THE CITY OF NEW ORLEANS,

PLAINTIFF IN ERROR,

vs.

The New York Mail Steamship Company.

BRIEF FOR PLAINTIFF IN ERROR.

L. JANIN,
Of Counsel for Plaintiff in Error.

M'GILL & WITHROW, PRINTERS, WASHINGTON, D. C.

Supreme Court of the United States.

THE CITY OF NEW ORLEANS,
Plaintiff in Error.

vs.

THE NEW YORK MAIL STEAMSHIP COMPANY.

No.

BRIEF FOR PLAINTIFFS IN ERROR.

The facts of this case are very clearly and fully shown by the bill of exceptions on page 68 of the record, by the documents thereto annexed, and by the agreed statement of facts on page 71. There is very little disagreement between the parties about the facts of the case, but a very wide one about the legal inferences to be drawn from them.

This case arises out of the military occupation of the city of New Orleans during the late civil war. The plaintiffs in error complain, not of the acts of the military authorities, but of the acts of the civilians placed in brief temporary authority by them, and sanctioned by the judge who decided this case, and who was part of this temporary authority.

On the 25th of April, 1862, a federal fleet, under command of Flag-Officer, now Admiral Farragut, came up the Mississippi, in front of the city of New Orleans, without encountering the least opposition above forts St. Philip and Jackson, many miles below New Orleans. On the 1st and 2d of May, 1862, Major General B. F. Butler came with troops to New Orleans, without meeting more opposition than the naval force. The sequel of this military occupation is best told in the opinions of the court in the cases of the Venice, 2 Wall.,

259, and the Circassian, 2 Wall., 135, and it is considered more appropriate to refer to these reports than to repeat their statements here.

On the 6th of May, 1862, General Butler promulgated his proclamation, dated the 1st of May, (Record, p. 35,) which is commented on in the case of the Venice, 2 Wall., 276. The court quotes two of its most significant passages, thus: "The proclamation declared the city to be under martial law, and announced the principles by which the commanding general would be guided in its administration." One is in these words: "All the rights of property, of whatever kind, will be held inviolate, subject to the laws of the United States." (p. 276.) Another passage quoted from it by the court (p. 278) is the following: "There was no capitulation. Neither the assurance nor the pledge was given as a condition of surrender. Both were the manifestation of a general purpose, which seeks the re-establishment of the national authority, and the ultimate restoration of States and citizens to their national relations, under better forms and firmer guarties, without any views of subjugation by conquest."

On May 10, 1862, General Shepley was appointed military commandant of New Orleans. (P. 38.)

On June 27, 1862, General Shepley issued an order, approved by General Butler, suspending the authority of the board of aldermen and assistant aldermen who had theretofore formed the common council of New Orleans, declaring that so much of the executive power as was theretofore invested in the mayor should be exercised by the military commandant of New Orleans, establishing and defining the attributions of two bureaus, one of finance, the other of streets and landings, the members of which were to be appointed by the military commandant, and nominating the members of said commission bureaus, viz: For the finance committee, E. H. Durell, chairman, D. J. Hughes, and Stoddard Harrell; and for the committee of streets and landings, Julian Neville, chairman, Edward Ames, and Benjamin Campbell. (P. 26.)

From May 21, 1862, to March 16, 1866, the military muni-

cipal government of New Orleans, through the several bureaux and acting mayor, generally exercised the municipal legislative power given by the charter of 1856. (P. 33.)

Many persons were successively appointed acting mayors by the military commandants, to wit, General Weitzel, Colonel Deming, Captain Miller, (p. 22;) Col. Quincy, (p. 38;) and finally, on June 8, 1865, Hugh Kennedy was appointed to this office by General Canby. (P. 38.) Very little, requiring to be noticed in this case, occurred during the mayoralty of any of them, except the last named, Mr. Hugh Kennedy.

The space between the Mississippi and the first row of houses or streets of New Orleans was always considered as public property, which could not be alienated, and had to be left open for the use of the citizens or strangers, and could not be incumbered by fences, sheds, or other buildings, any more than the streets of the city.

The New York Steamship Company, the defendants in error, are a company incorporated by the State of New York, owning packet steamships, which navigate between New York and New Orleans.

It is well known to every inhabitant of the country that, previous to 1864, numerous steamboats and steamships landed on the banks of the Mississippi, opposite New Orleans, much more numerous than since 1864. Not one of the commanders or proprietors of those steamships or steamboats ever attempted to acquire the privilege of occupying with fences, buildings, and exclusively for a number of years, any portion of the open ground lying between the Mississippi and the first row of houses, which in New Orleans is designated by the local name of "levee."

But in 1864 the New York Steamship Company probably thought that the time was propitious for them to acquire superior privileges over any enjoyed by their predecessors or competitors. On the 5th of January, 1865, an ordinance was passed by the military mayor and by the (also military) chairmen of the bureaus of finance and of streets and landings, representing the municipal government of New Orleans under

the military organization, by which the mayor was authorized to sell to the New York Steamship Company the collection of levee dues for the term of five years, from January 1, 1864, for a certain section of *the public levee*, having two hundred and eighty feet front on the levee near Jackson square, at an annual rental of $8,000, said company to have the privilege of enclosing said section in a manner satisfactory to the city surveyor. (P. 51.)

On the 9th of the same month a notarial act was passed between the mayor and the New York Steamship Company, in pursuance of the above described ordinance, the mayor granting to the company, besides what was allowed by the ordinance, the privilege of the use of a slip of sixty-two feet, lying between the steamboat depot and the ferry landing. The rent was to be paid in monthly instalments, for which the company executed its promissory notes. (P. 48.)

Having succeeded in this undertaking, and convinced that they were enjoying the protection of the parties in whose hands the municipal government of New Orleans resided, the New York Steamship Company carried their views higher. By an ordinance of July 8, 1865, passed by the military bureaus of finance and of streets and landings, and approved by Hugh Kennedy, the last military mayor, the mayor was authorized to lease to the New York Steamship Company the collection of the levee dues on the vessels owned or chartered by them for the term of ten years, from the 10th of July, 1865, "of a certain section of the public levee, being six hundred feet front, by a depth of two hundred feet near Jackson square, according to a certain plan, at a rental of $8,000 per annum, payable in monthly instalments; the said company to have the privilege of enclosing the said section in the manner set forth in said plan. All repairs of wharves and all other improvements to be at the exclusive cost of the company, and all to be delivered, at the expiration of the term mentioned, in good order and condition, (the natural wear and tear excepted,) without any charge to the city. The mayor was furthermore authorized

to make any additional terms and conditions not set forth in said ordinance, as might seem in his judgment to be needed by the public interest." (P. 46.)

In pursuance of this ordinance, and apparently on the same day, the mayor and the agent of the New York Steamship Company executed a contract before a notary public. (P. 3.) In addition to what was contained in the ordinance, the notarial act further provides:

§ 3, p. 4. "That the said company shall have the right, at their own cost and charges, to construct such buildings and sheds within the said enclosed space as may be required for the transaction of the regular shipping and freighting business of the company, and for the accommodation of the ships and vessels belonging to them or running in connection therewith: *Provided, however*, That said buildings and sheds shall be constructed in accordance with existing ordinances, relative to buildings within fire limits, and shall be covered with iron or slate roofs."

* * * * * *

(And p. 5, § 10.) "If, at the expiration of this lease, those who may at the time represent the city of New Orleans shall deem it proper to continue the landing and the property therein leased, for the use herein contemplated, and not to appropriate the same to other uses, then it is agreed that the New York Mail Steamship Company shall have a preference, as lessees, for a renewal of the lease, over other applicants offering the same terms, for such period of time as may then be agreed upon."

§ 11, p. 5. "The lease granted by the city of New Orleans to the present lessees, on the 9th of January, 1864, is hereby superseded and set aside by this contract and agreement of lease, and after the date hereof the present agreement taking effect in its place and stead."

§ 12, p. 5. "It is further agreed, that in case the company shall be obliged to remove the buildings and enclosures constructed by them on the levee, by reason of any action of other parties than the city, the company shall not have the right to demand damages in consequence from the city of New Orleans."

This last clause plainly shows that the Steamship Company and the unfaithful military mayor were conscious that, by carrying out such a contract, they were violating the rights of the public.

What is the difference between the two leases? That of January 9, 1864, (p. 51,) was for two hundred and eighty feet bank, at an annual rent of $8,000. It had still three and a half years to run. That lease was susperseded by the new lease of July 8, 1865, (p. 3,) for ten years, from the 10th of July, 1865, for six hundred feet front. Increased frontage and increased building privileges were granted to the company, but the rental remained the same, $8,000 per annum. A clearer case of favoritism could not easily be shown.

On the 23d of August, 1865, General George L. Andrews, chief of staff, (on General Canby's staff,) addressed a letter to Mayor Kennedy, in which, after speaking of the levee and wharves reserved for military purposes, he says:

"The major general has learned that the city authorities contemplate the alienation of this property for a long term of years, and he thinks it proper to suggest for your consideration the fact that the title to all this property is in the United States as captured. The authorities of the Government have conceded to the city the occupation, use, and profits of so much of it as is not required for public purposes, but the title by capture has not yet, as far as he has been advised, been relinquished by the executive department of the Government, and, until that is done, any leases or other disposition of this property should be for a short period."

"I am further instructed to say that the commanding general has heard only by accident of the action contemplated by the city authorities." (63.)

It would appear from the mayor's letters to General Canby, of August 24, (63) and September 6, 1865, (64,) that the mayor and his confederate bureaus had in view the leasing of other portions of the levee, a plan which was scattered by General Canby's interference.

T. M. Courtenay, the agent of the New York Steamship Company, afterwards addressed a petition to the commanding general on the subject of building a wharf for that company, and on this petition General Canby, on the 15th of September, 1865, made an endorsement, in which, among other things, he says: "I do not think that it will be wise, either for the city or the lessees under the city, to embark in

enterprises involving large expenditures until after the corporation has been fully reinstated in its original rights." (40.)

Notwithstanding this warning, the New York Steamship Company went on building at an expense of $65,000. (73.) But the time was approaching when the citizens of New Orleans would be permitted to resume the defence of their interests themselves. On the 26th of February, 1866, the Legislature of Louisiana passed an act providing for an election of a mayor and aldermen for New Orleans. (59.) An election was held, (41,) and General Canby issued, on March 18, 1865, general order No. 26, providing that, upon the qualification and inauguration of the municipal officers lately elected, the city government should be turned over to them, and the military city government should cease.

An early act of this reinstated civil city government was the passage of an ordinance, on April 12, 1866, (45,) in these words:

"Whereas the municipal authorities are bound to preserve unobstructed for public use the streets of the city and the banks of the river, which are public places;

"And whereas certain steamship and steamboat companies and other persons have lately caused to be enclosed certain portions of the bank of the river, and erected thereon certain buildings: be it therefore

"*Resolved*, That the city surveyor be, and he is hereby, authorized and directed to cause to be removed immediately all fences, buildings, &c., and other obstructions found on the levee in front of the city."

In pursuance of this ordinance the city surveyor, early in the morning of the 18th of April, 1866, with a number of laborers, demolished and destroyed the fence or enclosure which the Steamship Company had erected at a cost of $7,000, around the premises leased to them by Mayor Kennedy. (P. 72.)

On the same day, but later in the day, the Steamship Company instituted this suit, and sued out an injunction, and claimed $20,000 damages. Nothing more was done under the ordinance of April 12, 1866.

On the 21st of April, 1866, the city of New Orleans insti-

tuted a suit against the New York Steamship Company in a State court, (the third district court of New Orleans,) stating that the company were preparing materials and employing laborers for the purpose of enclosing and fencing in a portion of the landing, river bank, and levee of the city of New Orleans, running up six hundred feet along the Mississippi from the upper line of the ferry landing, and two hundred feet in depth; that this ground was by law reserved to the public use, and could not thus be excluded from public use, and thereupon the city prayed for an injunction against the said defendant, which was granted. (P. 17.)

On the 7th of May following, the Steamship Company filed a supplemental petition, setting forth that the city of New Orleans, in disregard of the injunction herein granted on the 18th of April, had brought a suit in the third district court of New Orleans, and there had obtained an injunction to prevent the Steamship Company from reconstructing the fences which had been destroyed on the 18th of April. And thereupon the Steamship Company prayed for and obtained a second injunction, to prevent the city of New Orleans and its functionaries from proceeding with the above or any other similar suit. (P. 11.)

On the same day, (May 7,) on the motion of counsel, the Steamship Company obtained an order from the circuit court, directing the defendants (the city of New Orleans) and George Clark, the acting mayor, to discontinue their above-mentioned suit in the third district court, or to show cause why they (p. 15) should not be punished for contempt.

On the 12th of May, Clark, the acting mayor, filed a sworn answer to this motion, disavowing any intention to disregard said order of injunction of the 18th of April, and stating that the said injunction had been served on him when the fence had already been removed by the city authorities; that the said injunction was understood as tending to preserve the tract of land in the condition in which it was when the injunction was served, and that, having been credibly informed that the Steamship Company was preparing materials and engaging workmen to put up a new fence on Saturday and Sun-

day night, at a time when legal process could not reach them, he had been advised to obtain the injunction in the third district court, with a view of maintaining matters in *statu quo*, within the meaning of the injunction of April 18 issued from the United States court. (P. 15.)

On the 7th of May the city filed its answer in the present suit, denying the authority of Hugh Kennedy, the military mayor, to bind, encumber, or alienate the real property of the city, beyond the period of his appointment, and setting forth further, that all such acts done by him ceased to have effect at the time when the administration of the government of the city was restored to the municipal authorities elected under the laws of Louisiana; that if said mayor, and the military bureaus associated with him, ever had any power, the lease of the 8th of July, 1865, was null and void, because none of the formalities prescribed by law and the ordinances of said city had been complied with, there being no specification advertisements, offer to sell at auction, adjudication, &c. Further, that the premises attempted to be leased were appropriated to public use; that the pretended lease would deprive the public of the use of the said premises, which is contrary to law; and that the enclosures, fences, and other buildings erected on said ground, were public nuisances, which the municipal authorities were by law authorized to abate. (P. 10.)

On the 24th of May, 1866, the city filed a supplemental answer, praying that the lease passed, by act before Andrew Hero, notary public, on the 8th of July, 1865, be set aside and annulled, and they then tendered to the plaintiffs their notes, executed in pursuance of said lease, and described in said notarial act, for $666 66⅔ each, one hundred and eleven in number, and numbered 10 to 126, inclusive. (P. 20.) These notes are now deposited in court, subject to the order of the plaintiffs. (P. 33, 73.)

The parties thereafter went to trial. The counsel for the city took a bill of exceptions to the admission of some and the exclusion of other evidence. (P. 68.) A statement of

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The parties thereafter went to trial. The counsel for the city took a bill of exceptions to the admission of some and the exclusion of other evidence. (P. 68.) A statement of

facts, accompanied by many documents, was signed by the counsel for both parties. (P. 71.)

On the 30th of June, 1866, the court gave final judgment, maintaining the injunction during the term of ten years from the 8th of July, 1865, and restraining the city of New Orleans from interfering with or disturbing *the plaintiffs in the quiet and exclusive possession of the premises described in the petition, and in the contract of lease on file*, condemning the city of New Orleans to pay to the plaintiffs $8,000 damages, and further ordering George Clark, late mayor of New Orleans, to pay a fine of $300. (P. 67.)

This judgment contains its own express and intrinsic condemnation in the passage we have italicized. It gives to the company the *quiet and exclusive possession* of part of the levee of New Orleans, whereas the law of Louisiana, which is paramount in this matter, expressly prohibits this. This is the real point of the case, and one of the easiest solution.

But before going into this discussion, we beg leave to remove two minor points with which the case is encumbered.

I. The acting mayor, Clark, was condemned to pay a fine of $300 for alleged contempt. Of course this was a judgment against the city, as whose agent he acted in the matter. Clark made an answer, which ought to have been considered as purging the contempt, and clearly showed that there was no contempt. (P. 15.) A comparison of the injunction obtained by plaintiff, on April 18, with that obtained by the defendants, plainly shows this, as is clearly stated in Clark's answer.

But the court erred in trying to interfere with the State court. That court inhibited the Steamship Company from building. There this question was presented for the first time, and the jurisdiction over this question, having first attached in the State court, ought not to have been interfered with by the federal court. (24 How., 450.)

II. It is contended that by accepting the payment of one of the notes given for the lease, after the civil authorities had recognized the government of the city, they have ratified the

lease of July 8, 1865. The facts are, that the military authorities transferred the city government to the newly-elected civil authorities on March 18, 1866. (P. 72.)

One of the one hundred and twenty monthly notes that were given for the lease fell due 8th April, 1866, and was paid at maturity. The resolution to remove the obstructions was passed on April 12.

The receipt of the payment of this note, which was undoubtedly deposited in bank for collection, was no doubt the act of an inferior executive officer of the city, who was not aware of the intention of the corporate authorities to pass the resolution which was adopted the next day. And this payment is insisted on as a ratification by the civil municipal authority of the lease executed by the military mayor and bureaus.

Did the corporate authorities know of the payment of this note when they passed the resolution? That is by no means probable, according to the usual course of business. A ratification must be the waiver of a right which is clearly understood.

When the ratification is not express, facts must be established from which it necessarily results.

Delabigarre *v.* Municipality, No. Two, 3 An. (La.) Rep., 230.

Let it be for a moment assumed, what will a little further on be proved, beyond doubt or cavil, that the municipal authorities, elected under an act of the Legislature of Louisiana, had themselves no power to make such a lease as the defendants in error rely on. How does the case then stand? "The city of New Orleans, whose powers are derived from the constitution and legislative enactments, can have none other than those conferred expressly or by necessary implication."

Guillotte *v.* New Orleans, 12 An., 431.

"Individuals cannot, by their conventions, derogate from the force of laws made for the preservation of public order or good morals."

Civil Code of La., art. 11.

"Laws organizing a city government are eminently laws for the preservation of public order, from which individuals cannot derogate by their convention. Contracts in violation of such laws are absolute nullities, not susceptible of ratification."

Louisiana State Bank *v.* Orleans Navigation Company, 3 An., 294.

And the common law does not differ from the civil law in this respect. "The city is not estopped from setting up the non-validity of the case when discovering the error.

27 Barb., 94.

A municipal corporation is one of limited powers; and if its officers assume to incur an obligation which it is not authorized to do, it is not made liable by the fact that it has received the consideration. A corporation cannot, by a subsequent ratification, make good an act of an agent which it could not have directly empowered.

Hodges *v.* City of Buffalo, 2 Den., 110.

Halstead *v.* Mayor of New York, 3 Comstock, 430.

Boom *v.* City of Utica, 2 Barb., 104.

Persons dealing with corporations must take notice of the limitations imposed upon their authority by the act of incorporation. Their powers are conceded in consideration of the advantage the public is to receive from their discreet and intelligent employment, and the public have an interest that neither the managers nor stockholders of the corporation shall exceed their authority. A corporation can do no acts, and make no contracts, except such as are authorized by its charter, and only then by such officers or agents, and in such manner as the charter authorizes.

Bank of Augusta *v.* Earle, 13 Pet., 579.

Perrine & Closs *v.* Delaware Canal Co., 9 Har., 172.

3. The above authorities are also applicable to the third, the real turning point of the case, viz: that the municipal authorities had no right to grant such a lease as is here set up.

The learned counsel for the defendants in error, in speaking, (in his brief, p. 11,) of the military city government established under General Shepley's order of June 27, 1862, (Rec., p. 25,) says:

"These officers in the city of New Orleans *preserved, at least, all the powers appertaining to the offices they were appointed to fill.* There were no loyal men to elect, so as to fill those offices. As a matter of necessity and duty to the people who had been subjugated, some government must be given them. As a grace and favor to them, that government was not martial law, *but an administration of their own municipal institutions* by the only men competent to administer them."

We conceive that by making this admission, which we believe to be in conformity with the facts, the defendants in error give up their whole case. Yes, we believe that the military municipal government had, during its existence, all the powers which the former and the present civil government possessed, but the operation of the powers of the military government could not be effective beyond the period of the existence of this temporary authority.

And what was the extent of the power of the civil government in reference to the levee of New Orleans?

The answer to this question is found in articles 446 and 448 of the Civil Code of Louisiana, viz:

Article 446: "The use of the banks of navigable rivers or streams is public; accordingly every one has a right freely to bring his vessels to land there; to make fast the same to the trees which are there; to unload his vessel; to deposit his goods; to dry his nets; and the like."

Art. 448. "The banks of a river or stream are understood to be that which contains it in its ordinary state of high water, for the nature of the banks do not change, although from some cause they may be overflowed for a time."

"Nevertheless, on the borders of the Mississippi, where there are levees, the levees shall form the banks."

Article 857, C. C., goes, if possible, still further: "Works which have formerly been built on public places, or in the beds of rivers or navigable streams, or on their banks, and which obstruct or embarrass the use of those places, rivers, streams, or their banks, may be destroyed at the expense of those who claim them, at the instance of the corporation of

the place, or of any individual of full age residing in the place where they are situated.

"And the owner of these works cannot prevent their being destroyed under pretext of any prescription or possession, even immemorial, which he may have had of it, if it be proved that at the time when these works were constructed the soil on which they are built was public, and has not ceased to be so since."

These provisions of the law have been applied by the supreme court of Louisiana with uninterrupted consistency and unrelenting strictness in numerous cases, among which it suffices to mention Mayor *vs.* Magoon, 2 Mart. Rep.; Hanson *et al. vs.* City Council of La Fayette, 18 La., 307; Mayor *et al. vs.* Hopkins *et al.*, 13 La., 331; Shepherd *et al. vs.* Third Municipality of New Orleans, 6 Rob., 349; Herbert *vs.* Benson, 2 An., 770.

The first case is that of the Mayor *et al. vs.* Magnon. (4 Mart., 2.) It was decided in 1815. The present Code of Louisiana was not then in existence, but the Spanish law was, and the civil law is everywhere the same on this subject. Magnon was a ship-carpenter, and he obtained, in 1781, from the cabildo, the Spanish municipal government of New Orleans, a permission to occupy some space on the levee, because he was doing some work for the Government. In 1809, the city council of New Orleans directed the mayor to cause the sheds, which Magnon had built on the banks of the river, to be pulled down. In the same year the city council, desiring to allow to the navy of the United States a sufficient space for building and repairing ships and to extend this facility to ship-builders, authorized the officer commanding the naval force to fix the boundaries of the navy-yard of the United States and those of a private yard to each of the ship-carpenters in the city. Magnon manifesting a disposition to oppose this action of the city council, the city council passed, on November 16, 1809, a resolution, directing Magnon to confine himself within the limits assigned to him. The police was ordered to remove all timber or other materials he might place beyond those limits. Magnon then obtained from the then existing superior court an injunction, restrain-

ing the city from carrying out this ordinance. By the decision of the supreme court Magnon lost the entire ground occupied by him, and, of course, the buildings he had erected on it, although he had occupied it for more than thirty years, because it was a *locus publicus*.

This decision was delivered by Judge Martin, and the whole law on this subject is so clearly and at the same time so concisely stated by the same eminent jurist in Shepherd *vs.* The Third Municipality, (6 Rob. Rep., 349,) that we venture to transcribe the entire report:

"MARTIN, J. The plaintiffs are appellants from a judgment which refuses them damages for an injury, which they contend they have sustained, in consequence of the corporation having caused wharves and other works to be erected on the bank of the Mississippi, opposite to their lot, on which they had constructed, at great expense, valuable saw-mills, from which they derived great profit, by the erection of which works, they have been disabled from availing themselves of their mills, which they had put up with the consent and permission of the municipal authorities.

"The mills having been built on lots of the plaintiffs, fronting on the river, but separated from it by a street, no consent or permission was needed or given by the municipal officers, for their erection; but the city council permitted certain works to be made across the street, and the bank of the river, to the water, to facilitate the bringing of timber to the mills. The street and the banks of the river are '*loci publici*'—out of commerce, and the municipal authorities are bound to see that the use of them by the public be not obstructed; but they have no power to allow any erection thereon which may render their use incommodious. They may, indeed, temporarily tolerate works thereon, which they may deem not injurious to the rights of the public; but no permission of a council can prevent a subsequent council from putting an end to such toleration. The plaintiffs do not complain of the positive destruction of any part of their property, but only of the exercise of the right by the municipality, or rather of its compliance with its duty, to facilitate commerce, by the erection of new wharves in parts of the port where the extension of business, in its opinion, demanded them. The plaintiffs' and appellants' counsel has urged, that his clients have, in common with every inhabitant or stranger, the free use of the banks of the Mississippi, and that the municipality

cannot prevent any person from using these banks. While they exercise a right which they have in common with others, no one can impede or obstruct their use of the banks while there is, close by the part which they occupy, a sufficient space left for others. The counsel have told us, that a part of the bank, in the use of which the defendants have disturbed them, does not extend above sixty feet, the one-half of the front of the lots on which they have erected their mills. No one has a right to a permanent occupancy of the banks of a river. The planter may land his crop thereon, but he must remove it. He cannot leave it there until he has found a purchaser. The fisherman may, with a few boards, erect a temporary hut, in which he may shelter himself during the storm; but he cannot erect any permanent building. The municipal authorities employ officers whose duty it is to see that merchandize landed, or to be shipped, does not encumber the banks of the river any longer than is strictly needed.

"It appears to us, that the erection of wharves before the city of New Orleans and its suburbs, at such places as commerce may require, is a legitimate exercise of power in the council of either of the municipalities." (3 Mart. N. S., 140.)

In Hanson *et al.* v. The City Council of Lafayette, (18 La. Reps., 307,) the supreme court say: "If there be one provision of law clearer than any other, it is, that no man has a right to take exclusive possession of the banks of a navigable river, and appropriate them to his own use, and particularly of the banks of the Mississippi. He has no right to extend levees at his will and pleasure, or erect buildings and works, that will obstruct the free use of the banks to all men, although the right of property is in him, as proprietor of the adjacent lands."

In the case of Shepherd *v.* Third Municipality, and also in the case of Herbert *v.* Barron, (2 Ann., 770,) it was held, that although a city council might have and actually had given to individuals the right of occupying a portion of the bank of a navigable river, yet the same council or any subsequent council might withdraw it, and procure the obstructions to be removed.

In the case of the City of Cincinnati *v.* White, (6 Pet., 431,) this court held, that the sloping place between the Ohio

river and the first row of houses fronting it could not be built on or alienated, because, by destination, it was a *locus publicus*. The same principles which govern that case are acknowledged by the supreme court of Louisiana. (Livaudais v. Municipality No. 2, 16 La. Rep., 509; Delabigarre v. Municipality No. 2, 2 Ann., 230.)

But how much stronger than a case of dedication is the case of the banks of the Mississippi, the freedom from all or enactment of which is declared by positive and certainly unambiguous law.

The learned counsel for the defendant lays stress in his IVth point on the admission (in p. 73 of the Record) that the city of New Orleans had heretofore "leased portions of its wharves to individuals and companies, and had, in one instance, farmed out the collection of the levee dues upon the entire wharves by sections." But farming out the levee dues as a mode of collection, or a permission to tie a ship or boat to a particular wharf, are certainly not obstructions of the "bank of the river."

4. The learned counsel, in points VI to VIII of his brief, seems to consider that the military city government of New Orleans possessed a peculiar authority in consequence of the war power out of which it arose. This position is clearly in opposition to the admission in paragraph *d*, (page 11 of his brief,) which we have already referred to. However, we do not shink from the discussion of this proposition. What was the character of the late war? It is clearly shown in President Lincoln's proclamation of September 22, 1862. (12 Stats. at Large, p. 1267.) "Hereafter as heretofore the war will be prosecuted for the object of practically restoring the constitutional relation between the United States and each of the States, and the people thereof, in which States that relation is or may be suspended or disturbed." Such was also the spirit of General Butler's proclamation of May 1, 1862, commented on in the case of the Venice, 2 Wall. This was not a war of conquest, but of restoration. No act of Congress ever authorized a commanding general, and still less persons delegated by him, to determine what the condi-

tion of a State once in insurrection should be after it has been conquered, the federal authority restored, and the temporary military government should have been withdrawn, as no longer necessary for the preservation of the Union. On two occasions General Canby stated that, inasmuch as the military government would soon be withdrawn, the military municipal officers should confine their acts to matters which would not extend over a considerable length of time, such as long leases. (Pp. 40 and 62.) The true relation of the Government of the United States towards the inhabitants of New Orleans, after the capture of their city, was thus stated by the chief justice in the case of the Venice, 2 Wall., 277: "Actual military occupation draws after it the full measure of protection to persons and property, consistent with a necessary subjection to military government. It does not indeed restore peace, or, in all respects, former relations, but it replaces rebel by national authority, and recognizes to some extent the conditions and the responsibilities of national citizenship."

"The regulations of trade, under the act of 1861, were framed in accordance with this policy. As far as possible, the people of such parts of the insurgent States as came under national occupation and control were treated as if their relation to the national Government had never been interrupted."

Flag officer Farragut, when demanding the surrender of the city, promised security to persons and property, expressed the general policy of the Government. General Butler, in his proclamation, repeated the same assurance.

P. 278: "Neither the assurance nor the pledge was given as a condition of surrender. Both were the manifestation of a general purpose, which seeks the re-establishment of the national authority, and the ultimate restoration of States and citizens to their national relations, under better forms and firmer guaranties, without any views of subjugation by conquest."

Had the people of New Orleans been citizens of a conquered foreign country, and Hugh Kennedy the military mayor of the foreign conqueror, his lease would have fallen to the

ground with the restoration of peace. In such a case, the fruits, rents, and profits of the lands and immovable property of the conquered party would belong to the conqueror, and he might lawfully claim and receive them. "Any contracts and agreements, however, which he might make with individuals farming out such property will continue only so long as he retains control of them, and will cease on their restoration to or recovery by their former owner." (Halleck's International Law of War, p. 781, and the numerous authorities there collected.) But this is not our case, and it is useless to pursue this subject any further, or accumulate more authorities. Evidently the case of the city of New Orleans is much more favorable than that of a former foreign enemy. The southern States, once in insurrection, were not conquered; they were subdued, and afterwards restored to their former relations.

We therefore respectfully submit, that the lease of July 8, 1865, should be annulled, and that the judgment of this court should be for the plaintiffs in error.

Respectfully submitted,

LOUIS JANIN,
Of Counsel for Plaintiffs in Error.

Supreme Court

OF THE UNITED STATES.

THE CITY OF NEW ORLEANS,

Plaintiff in Error.

against

THE NEW YORK MAIL STEAMSHIP COMPANY,

Defendant in Error.

In Error to the Circuit Court of the United States for the Eastern District of Louisiana.

STATEMENT & POINTS

FOR PLAINTIFF IN ERROR.

E. A. VAN SICKLE,

Of Counsel.

New York:

HOWARD & STOVER, LAW PRINTERS, 42 & 44 NASSAU STREET, COR. LIBERTY.

1869.

Supreme Court

OF THE UNITED STATES.

SUPREME COURT

OF THE UNITED STATES.

THE CITY OF NEW ORLEANS,
Plaintiff in error
against
THE NEW YORK MAIL STEAMSHIP COMPANY,
Defendant in error.

Statement and Points for Plaintiff in error.

In error to the Circuit Court of the United States for the Eastern District of Louisiana.

This case comes to this Court on a writ of error, brought by the City of New Orleans, to review a judgment rendered in the Circuit Court of the United States for the Eastern District of Louisiana by Hon. E. H. DURELL, Judge, and arose upon the following statement of facts.

Statement of Facts.

The City of New Orleans is a municipal corporation, organized pursuant to an Act of the Legislature of the State of Louisiana, and deriving its powers from a charter under the laws of that State, granted March 20, 1856.

The New York Mail Steamship Company is a corporation, organized under and pursuant to the laws of the state of New York, domiciled in said state, and at the dates hereinafter mentioned, carrying on business in the City of New Orleans, through a duly authorized agent, engaged in the transportation of passengers and freight between the ports of New York and New Orleans, on steamships of their line,

In April, A. D. 1862, the City of New Orleans was captured by the combined military and naval forces of the United States, under command of Gen. Benjamin F. Butler and Admiral D. G. Farragut, and the said City, and a portion of the State of Louisiana, were held under military occupation, until the 19th day of March, A. D. 1866, when the City was surrendered to the duly elected and qualified civil authorities.

(*See printed case, p.* 24.)

Prior to that time the City had been governed by a military mayor, appointed by the commanding general of the Department of the Gulf, and by various boards of officers, who exercised authority under the same power: such as boards of finance, streets and landings, &c.

On the 8th day of June, A. D. 1865, one Hugh Kennedy, was appointed by Gen. Canby, then commanding the Department of the Gulf, acting mayor of the City of New Orleans.

(*See page* 23 *printed case.*)

On the 8th day of July, A. D. 1865, the said Hugh Kennedy, in his said capacity of mayor, and pretending to act by virtue of a resolution of the Common Council of the City of New Orleans, made, executed and delivered to the agent of said Company, a certain contract of lease, whereby, for the consideration of eight thousand

dollars per annum, the property mentioned therein, (the same being the levee front or landing of said City) was leased to said Company for their own exclusive use, for the period of ten years, thereby granting certain privileges as to enclosures, sheds, wharves, &c.

The Steamship Company, subsequently, enclosed the leasehold premises and erected sheds and buildings for the storage of freight, &c. thereon, and used and occupied said premises as a landing for their steamships, by virtue of the said lease.

On the 16th day of April, 1866, a few weeks after the City was surrendered, and the civil authority reorganized; the Common Council, considering it their duty to preserve unobstructed, the banks of the river, which are public property, for the use of the public, passed a resolution directing the City Surveyor to remove all obstructions found on the banks of the river; and said officer with a posse of men at once proceeded to and did tear down and remove the buildings and fences erected by the said Company.

Highly incensed at this act, the Company at once brought an action in the Circuit Court of the United States, for the Eastern District of Louisiana, and obtained an injunction against the City of New Orleans, restraining it from destroying said obstructions or in anywise interfering with them in the enjoyment of said leasehold property.

The injunction, however, came too late. The buildings had been torn down, and the enclosures removed, before it was served upon the City authorities. The Company claimed twenty thousand dollars damages from the City for the alleged wrongful act.

The action was tried before the Hon. E. H. DURELL, District Judge of said District, then holding a term of the Circuit Court, in the absence of a Circuit Judge who had not been appointed.

After a somewhat protracted trial the cause was sum-

med up and finally submitted on the 21st day of June, 1866, and on the 30th of the same month, judgment was rendered against the City, for the sum of eight thousand dollars damages and costs, for the removal of the alleged obstructions, and the said injunction decreed to remain in force, from the 8th day of July, 1865, to the 8th day of July, 1875, being the unexpired term of said lease.

The case is now here on that writ of error, and a reversal of the judgment therein asked for the reasons and upon the grounds set forth in the following points:

Abstract of the Pleadings.

The petition was filed April 18th, 1866, (fol. 1.) setting forth the lease, and claiming thereunder the use and occupation of the premises in question for a period of ten years from the date thereof, and the right to keep the river bank, or levee, enclosed from the river two hundred feet back therefrom, and six hundred feet along the front; that the defendant in error had inclosed the same accordingly (fol. 3); that the plaintiff in error had and was about to tear down and remove the sheds and fences thus erected. The demand for judgment (fol. 4) is, substantially, that the city be restrained from removing these obstructions, or in any manner interfering therewith, or, in other words, the court is asked to adjudicate the Steamship Company in the exclusive possession of this public highway, so taken possession of by the Company to the great detriment of the public and the city, and a decree for twenty thousand dollars damages, for the removal of these fences and sheds. A copy of the lease is referred to, which is (at fol. 7) signed by Hugh Kennedy, Mayor, (fol. 14.)

The answer of plaintiff in error, (at fol. 24) "denies "the execution of the lease, because it was not made by "any person or persons authorized to bind the city,"

and further pleads that if any such contract was ever executed, it would be valid only during the period of the suspension of the regularly elected officers of the municipality, and that, on the restoration of the municipal government, all contracts made with the appointees of the military, ceased. That said Kennedy, in his pretended capacity as Mayor, the Bureaux of Finance and of Streets & Landings, and both Boards of Aldermen, had no power to bind the city in the form alleged in the petition, except by complying with the provisions of the Charter and the City Ordinances: that is to say, by advertising the sale or lease at auction, giving specifications, adjudication, &c., &c. That the premises in question were not subject to lease or grant, and had been appropriated to public use; that said contract, and using the premises by inclosure in accordance therewith, would constitute a nuisance, which the city had power to abate.

The defendant in error by supplemental petition (at fol. 28) procured an injunction restraining the city from proceeding with any suits enjoining the Steamship Company from rebuilding the said fences and sheds. The plaintiff in error moved to set aside the injunction, on the ground that the defendants in error were attempting to destroy a public highway (fol. 49), and by supplemental bill ask affirmative relief that the lease be canceled and set aside, and file the notes given by the defendant in error, subject to their order.

It is claimed by the plaintiff in error that Hugh Kennedy did not, and could not, represent the city government in any capacity; that these fences and sheds, being an obstruction and a nuisance, they were properly removed; and the said lease being a cloud upon the public property of the city, given under circumstances which make it a nullity, it was error not to decree its cancellation, and for these reasons and the exceptions, there should be a reversal of the judgment and a new trial granted.

First Point.

The city was captured in April, 1862. The lease under which the Steamship Company claims title, was executed on the 8th day of July, 1865. The sheds and fences were erected immediately after the lease was obtained. March 19, 1866, the city government was resumed by the regularly elected and qualified officers of the municipality. Soon thereafter the municipal officers commenced the abatement of nuisances, and the subject of these sheds and fences having been reached in due course, they were pronounced a nuisance, and a resolution passed both Boards of the Common Council, and approved by the Mayor, authorizing and directing the City Surveyor to remove the sheds and fences which inclosed the banks of the river, and constituted an obstruction to the levee in front of the city. The statute of the State of Louisiana declares the levee to be a public highway, and the public had always been zealously guarded in the right of way along the levee in front of the city, and it may be taken as conceded that the corporation, even by its proper officers, had no power of alienage of this levee, or the obstruction of the highway running along in front of the city; otherwise the city might be cut off from the river front and its commerce destroyed, or made tributary to some corrupt combination which might get temporary political ascendancy.

The city, by its charter as well as by the civil law, was the judge of what constituted an obstruction to the streets or public highway, or was a nuisance, and had the power to remove or abate the same.

(*Mayor* agt. *Magnon*, 4 *Martin La. R.*, 10.
Henderson agt. *Mayor*, 3 *La. R.*, 563.

Municipality No. 1 agt. *Kirk*, 5 *Annual R. La.* 34.
Pulley agt. *Municipality No.* 2, 18 *La. R.*, 278.)

There is no dispute but that these fences and sheds cut off six hundred feet of the river front in the most central part of the city from the public, and the connection for this distance of the public highway running on the levee along the river bank in front of the city thus severed, to the serious inconvenience of the public.

(*See map put in evidence by the plaintiff in error. Ex.* "D."

Second Point.

The doubtful right of the military authorities to enter into a contract for the purpose of binding the city of New Orleans, can only be maintained by reference to the rights of captors.

That captors cannot make any contracts regarding public property, such as leasing, beyond the period of hostilities, is too well settled for argument and the lease must be canceled, for by its terms, it has over five years yet to run.

(*Halleck on International Law and Laws of War, pp.* 446, 447 *&* 448, *chap.* 19, *secs.* 2, 3, 4 *&* 5; *chap* 35, *secs.* 8 *&* 9.
Twiss on the Law of Nations and Rights and Duties in Time of War, chap. 4, *see.* 66.

Phillimore, vol. 3, p. 498, sec. 583 & 584. Digest, Title, Rights, Private Rights, Restitution, Rights of Captors.)

In the case at bar the court refused to entertain the question of cancellation of the Lease in any form or upon any terms whatever, but directs the entry of a general judgment "that the injunction "herein sued out be maintained and held in force for "the period of ten years from the 8th day of July, "1865." (being the term of the Lease) and that the "plaintiff in error be prohibited and restrained from "interfering with the defendants in error in the ex- "clusive possesssion of the premises leased &c."

(*See page* 67 *fol.* 183 *printed case.*)

In other words the Steamship Company are adjudicated in the *exclusive* possession of a public highway guaranteed by the State, to the general public before and since the charter was given to the city. This is clearly erroneous and this court cannot afford to either sustain or promulgate such a doctrine. By this judgment it will be seen that the plaintiff in error is prohibited from interfering with the defendants whether they paid the stipulated rent or not; whether they refused to pay one or all the notes given under the terms of the Lease, though in the 8th clause of that instrument (fol. 12 page 5 printed case,) "in case of default herein "made in the payment of these promissory notes "*punctually*, the city of New Orleans shall have the "right to annul said Lease and take possession of "the premises and improvements without payment "therefor without applying to a court of justice,"

It is therefore plain that the judgment sought to be reviewed is in direct conflict with the terms of

the contract on which the suit is based and the judgment obtained. If the contract of Lease, is valid this is error. If the contract ceased on the resumption of civil law, it is error.

If the lease never had any validity, (the more correct view as we claim,) it is equally erroneous.

But we apprehend this court, is not prepared to assert the doctrine, and by asserting establish it, that a conqueror may alienate the real estate of a conquered province, beyond the term of the occupation by armed force, or its restoration to the vanquished authority. Such a decision emanating from this court, would be in direct conflict with the legislation of congress, since the war, and in contravention of every principle of international law as enunciated by Vattel, Puffendorf, Bynkerschoeck, Phillimore, Halleck, Grotius and Twiss, and the established custom of every nation.

NOTE.

There is no pretence that the property conveyed to the defendants in error, belonged to the Confederate States, or was the property of a public enemy, so as to bring the subject of inquiry within the rule contended for by some commentators on international law, as to the right of a conqueror to alienate the public domain of a conquered enemy. (*See authorities cited in the latter part of section* 3, *page* 448; *Halleck, In. L.*) Even in such a case the vanquished have all the rights of Postliminy reserved to them. There was no armed resistance to the United States when the lease was executed. There was no cause, pretence or excuse, known to the laws of war, for any military authority to contract for a municipality, or by reason of the proclamation of Gen. Butler, on taking possession

of the City in 1862. (*See his proclamation p.* 35, *fol.* 95.) The right to alienate immovable or real property, is coextensive with the right to confiscate *without process of law.*) This right has never been claimed since the Treaty of Munster, 1648. (*See Twiss Law of Nations and rights and duties in time of war, p.* 126, *sec.* 66, *and authorities there cited.*) There may be some doubt raised, as to the rule of international law governing in the case at bar.

If there is a different rule applicable, where the war is what is termed "a civil war" or a "rebellion" and recognized by the different nations, as belligerent's, and treated by the government on an unqualified belligerent status—a rule far less stringent must be adopted.

In all the proclamations issued by the president and the commanding generals, the purpose of the war or an occupation was substantially declared to be temporary, and only to continue until armed resistance to the United States authorities should cease. (*See Gen. Butler's proclamation, supra, also President's proclamation.*)

If a military officer could deed away the property of the City of New Orleans, absolutely for ten years, after peace had been proclaimed and all resistance had ceased for months, he could deed it for an unlimited term, and could also fix the consideration of the transfer. Therefore, Gen. Canby refused to accept or ratify this lease as the act of the military, because he was satisfied, that no military authority had power to alienate the City property beyond the period of hostilities. (*See his communication on pages* 39 *and* 40, *fols.* 106 *to* 110; *see also general order* 11, *p.* 74, *fol.* 203, *see also Gen. Canby's letter to Mayor Kennedy, military mayor, &c., fol.* 169, *p.* 62; *see indorse-*

ment on the communication of J. M. Courtney, asking the approval on the subject of building wharf, &c., fol. 110.)

The property in question, as before stated, belonged to no enemy *at the* time of the execution of the lease, or at any other time. It belonged to the city of New Orleans, in trust for the public. It belonged to the plaintiff in error, with certain restrictions and limitations, to wit: that it should be used as a public highway for the general public. It was not subject, under any considerations, or upon any grounds, to confiscation or alienation, either by aid of judicial act or otherwise, and that therefore the defendant in error had no title, and was a trespasser *ab initio*, and in obstructing the right of way of the public, created a nuisance which it was the duty of the city to remove, or abate, or, in fact, any member of the public could abate or remove.

Third Point.

The last clause of the judgment appealed from, imposing a fine of three hundred dollars upon the acting mayor of the City of New Orleans, was erroneous. The facts touching the contempt, were simply as follows:

The plaintiffs in error succeeded in taking down the fences and sheds and removing the obstructions to the public highway, before any injunction was served by the Steamship Company. After the removal, the Steamship Company made preparations to renew the obstructions to the highway, enclosing the levee again. The City commenced a suit and

procured an injunction in one of the State Courts, restraining the Company from again obstructing the highway, by replacing said obstructions.

On the service of the process in this suit, the defendants in error, procure the issue of a second injunction in the suit now being reviewed, enjoining the officers, attorneys and agents of the City from prosecuting said action, or commencing any other action against the Steamship Company.

The alleged offense of the acting mayor, consisted in not discontinuing the action commenced by the City in the State Court as no other fact appears. Clark was acting mayor in the absence of Mayor Monroe, and his official power terminated immediately upon the return of Monroe.

A peculiarity of the charter of the City, also shows that the heads of the different bureaux have large powers, and in the absence of proof as to the power of the mayor may be presumed to have control of matters connected with their branch; for instance, the Bureau of Streets and Landings, Wharves, &c., had control of matters arising therefrom as they signed all papers connected therewith.

We submit that the question of enjoining the defendant in error from replacing those obstructions or obstructing the highway, was a distinct proper subject of litigation in a State Court, and having first obtained jurisdiction, it was not proper or competent for this Federal Judge to interfere. The two Courts may have had jurisdiction, but the one first acquiring it, cannot be ousted by the proceeding subsequently commenced in another.

This has been the rule uniformly since the days of Woolsey.

(*McCarthy* agt. *Peake*, 18 *How. N. Y. Pr. R.*, 188;

Bouton agt. *The City of Brooklyn et al.*, 7 *How. N. Y. Pr. R.*, 198;
Hogan agt. *Lucas*, 10 *Peters*, 400;
Freeman agt. *Howe et al.*, 24 *How. U. S.* 450.
Peck et al. agt. *Jenness et al.*, 7 *How. U. S. R.*, 612.)

Fourth Point.

The refusal of the court below to receive the general order of Gen. Canby, in regard to the alienation of property, by the military authorities, (page 74, fol. 203), was erroneous.

See bill of exceptions, page 68, *fol.* 184.

The military appointees, could do nothing except by the authority of the general commanding. The general order in question, was issued as a letter of instruction to those officers, and limited their action to the scope of authority therein contained.

The objection that it was made subsequently to the execution of the lease, and an interference with vested rights of the company, is not good. It was issued by the same authority that granted those alleged rights, and the city then being under martial law, the will of the commanding officer was the supreme law, and if he saw the necessity of abridging rights theretofore granted by his authority, he had the right to do so. By reference to that order, it will be seen that all acts of the military authority, were to be subject to the rights of the City of New Orleans, and were not to extend beyond the period

when the civil authorities should resume their functions.

That order had a most important bearing upon the case, and had it been admitted as evidence qualifying the rights as granted to the company under the lease, the judgment must have been against the validity of that instrument. The general policy of the government was, during the whole course of the war, to abstain from interfering with all rights of property, and that they would be held inviolate, SUBJECT ONLY TO THE LAWS OF THE UNITED STATES.

(*See Gen. Butler's Proclamation, supra, fol.* 99).

It is difficult to see how the exclusion of this general order can be maintained. The company cannot stand as innocent purchasers without knowledge. They were as before stated, engaged in business in New Orleans, and had been so engaged for several years previous to this lease. They knew perfectly well the nature of the authority they were contracting with, and under what limitations it would come. The proclamation of Gen. Butler showed the limitation: "All rights of property, of whatever "kind, will be held inviolate, subject only to the "laws of the United States." If any sub-appointee should make a contract violating this stipulatory clause of the proclamation, by a deed of contract, it is simply void. Again, it is provided in this proclamation (fol. 96) that its provisions only extend to the resumption of power by the civil authorities.

Had General Butler been in command when this lease was executed, he clearly would have refused to ratify, as being not in accordance with the solemn stipulations contained in the proclamation above cited, as General Canby refused to do: and

said lease was never approved of by the commanding General of that military district. But we claim that General Order, No. 11, (at fol. 203) showed conclusively what the minds of the contracting parties were; what contracts really were intended to be made or allowed by the commanding general, and that if a lease had been given for ten years, yet if the war did terminate at any time before that, the lease should terminate also at the cessation of hostilities.

We submit, that the terms contained in the proclamation of General Butler, made on taking possession of the city, were reaffirmed by the proclamation of General Canby, called General Order No. 11, and that the exception to the refusal to receive that Order in evidence is fatal to the judgment, for the reason that the Proclamation and General Order No. 11, taken together, limit the term of the lease and show conclusively that though the lease, by its terms, is to embrace the period of ten years, yet if the city is restored to the civil authorities at any time before the apparent term ceases, then the lease ceased to be of any further force, according to the view in which the Steamship Company must have contracted. There are, also, several other reasons why this exception is good.

Fifth Point.

The second exception, (at fol. 186,) is well taken. It was completent to dispute the fact testified by the witness Courtney, that the Lease had been a benefit to the city by proving this was not so, to a mathe-

matical certainiy. If it was error to allow Courtney to give this irrelevant and immaterial testimony it was clearly erroneous to refuse testimony, which clearly disproved it, and the error thus committed shows the judicial mind so clearly that we claim it constitutes a material error, and there was, therefore a mistrial. If the testimony of Courtney was material then there was manifest error in the exclusion of the testimony of Monroe and Clark, to which the formal exception was taken (fol. 186 and 7.)

The judgment should be reversed and a new trial ordered.

E A. VAN SICKLE,
of Counsel.

SUPREME COURT
OF THE UNITED STATES

THE NEW YORK MAIL STEAMSHIP COMPANY,

Defendant in Error,

versus

THE CITY OF NEW ORLEANS,

Plaintiff in Error.

BRIEF FOR DEFENDANT IN ERROR.

JAMES EMOTT,

Of Counsel for Defendant in Error.

NEW YORK:
W. H. Batchelar, Steam Printer, 24 Beekman Street.

1869.

SUPREME COURT
OF THE UNITED STATES.

THE NEW YORK MAIL STEAMSHIP COMPANY,
Defendant in Error.

vs.

THE CITY OF NEW ORLEANS,
Plaintiff in Error.

Brief for Defendant in Error.

STATEMENT OF PROCEEDINGS IN THE CAUSE.

This is a Writ of Error to the Circuit Court of the United States for the 6th Circuit and Eastern District of Louisiana.

The action was commenced by petition for injunction and relief to restrain the City of New Orleans from tearing down or removing the enclosures or buildings on a wharf occupied and claimed by the defendant in error under a lease, and for damages.

Case, p. 1.

An injunction was granted and served on the

18th of April, 1866; but before its service most of the buildings and enclosures were destroyed.

Case, pp. 7–9; fol. 17–21.

The defendant answered, denying the validity of the lease.

pp. 10, 11; fol. 24–27.

The cause was tried before Judge Durell without a Jury.

He gave judgment for the plaintiff, enjoining the defendant as prayed for, and condemning the defendant to pay the plaintiff damages to the amount of $8,000.

See Judgment, p. 67; fol. 183.

The record contains a bill of exceptions.

p. 68; fol. 184.

And a statement of facts agreed upon, to be used on trial in error.

p. 71. fol. 192.

Also an additional statement of facts.

p. 75; fol. 204.

To the statement of facts is appended a list of documents to be taken as part of it. The documents occur in the case at the places stated.

p. 73; fol. 200.

Facts.

The plaintiff in the Court below was a steamship company carrying on a trade with New York, amounting to one-sixth of the whole commerce of the port of New Orleans.

This commerce could not be protected without an enclosure, except at great expense.

No more room was enclosed and used than was required.

p. 75; fol. 204.

The Army of the United States captured the city of New Orleans from the Confederate government and the rebel authorities on the 1st of May, 1862. On the 27th of June, 1862, the commandant of New Orleans, with the consent and approval of the general commanding the department, organized a government of the city of New Orleans.

Fol. 65, p. 25.

The head of the government was a military officer, called acting-mayor, until in 1865 Mr. Kennedy, a civilian, was appointed mayor.

Fol. 104; p. 38.

From the time of this capture and military occupation, the public property has been administered, and the municipal government carried on for about four years by the military authorities, and by officers acting under them, until the State was reconstructed, loyal or pardoned men were found for the city offices, and the government surrendered to their hands by a general order of Major-General Canby, March 18, 1866.

pp. 71, 72; fols. 192, 193, 194.

The bureaus of streets, etc., and the military mayor exercised all general administrative and legislative powers on all subjects of municipal con-

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pp. 71, 72; fols. 192, 193, 194.

The bureaus of streets, etc., and the military mayor exercised all general administrative and legislative powers on all subjects of municipal con-

cern, with the knowledge and sanction of the military commandant.

p. 71; fol. 193; p. 25, fol. 65–69,

The city of New Orleans, under its charter of 1856, had, before the rebellion, leased its wharves and farmed out levee dues.

p. 73; fol. 199; p. 52; fol. 140.

On the 9th of January, 1864, the then military mayor, with the sanction and direction of the bureaus of the city government, leased to the New York Mail Steamship Company for five years the right to use and enclose and collect levee dues on a portion of the levee front.

p. 48; fol. 129; p. 71; fol. 193.

On the 8th of July, 1865, Hugh Kennedy, military mayor, under the direction of the bureaus of the city government, leased to the New York Mail Steamship Company, the defendant in error, a portion of the levee front, including that covered by the lease of 1864, and more, for ten years. The Company was to have its exclusive use for their own vessels, but not to receive the dues from other vessels. They were authorized to enclose the wharf and to build sheds. They were to pay a rent of $8,000 per annum, monthly, and gave 120 rent notes due on the 8th of each month for $666.60 each.

pp. 3, 4, 5; fol. 7–15; pp. 71, 72; fol. 194.

The Company took possession of the wharf, erected sheds and buildings at an expense of

$65,000; and the fence or enclosure, which the defendants demolished, which cost $7,000.

pp. 72, 73; fol. 195–198.

The Company paid eight of the rent notes at maturity to the military mayor and city government, *and paid the ninth note on the 11th of April*. 1866, *to the city administration elected and suffered to take possession of the government.* The 111 other notes were transferred with the one thus paid by the military to the elected city officers. The Company remained in quiet possession until they were interfered with by the defendants, April 18th, 1866. a few days after they had accepted a month's rent.

p. 73; fols. 198, 199.

On the 18th of April, 1866, after they had received rent from the defendant in error, without any notice to the latter, and without any demand for possession of the premises, the city surveyor, acting under orders of the mayor and common council, suddenly and forcibly entered on the premises early in the morning, and destroyed the enclosure erected by the defendant in error.

p. 72; fol. 195.

After this suit was commenced, the city, by supplemental answer, tendered the rent notes not yet due and brought them into Court.

But no tender was ever made of the money paid and received April 11th, 1866, nor of the money received on the former rent notes by the military

government of the city; nor was any reimbursement offered of the expenditures made by the Company on the property.

p. 73; fol. 198.

The damages inflicted by the acts of the plaintiff in error are found by the Judge to have been $8,000.

POINTS.

I.

There are three exceptions stated in the Bill of Exceptions. (Case, p. 68, fol. 184.) All of these are untenable or insufficient to justify any interference with the judgment.

1. The order of General Canby, dated Feb. 9, 1866, which was excluded (p. 74; fol. 202–3), was immaterial to this controversy.

a. It was made nearly a year after the lease made to the defendant in error; and it was not competent for the military authorities to destroy or interfere with vested rights acquired by contract with a civil government established and exercising *de facto* authority, as a civil and not a mere arbitrary power. Even if military or martial law would justify an act subversive of existing rights or contracts, because it is the mere exercise of military power, the city of New Orleans was not then governed by mere martial law. The government

established by the orders of the military commander was a civil government, set up as a necessary substitute for the former disloyal officers of the city. Although this government might have been displaced or destroyed by the power which raised it, its acts during its existence were like those of any other actual government exercising legal authority; and equally beyond the exercise of arbitrary power.

b. But the order of General Canby did not attempt or propose to affect past acts of the city government. It only assumed to lay down a rule for their guidance in the future.

It could not therefore, as it did not attempt to have any effect upon previous acts and contracts, and hence was wholly immaterial in this case.

II.

The evidence of Courtenay as to the extent of the trade and commerce carried on by the plaintiff below (defendant in error) was offered and received without objection.

It was offered to show the necessities of the defendants in error for room and protection to property, and the damage to them by the violent acts of the city authorities (see fol. 204; p. 75), and not the advantageous character to the city of the lease in question.

The evidence offered by the plaintiff in error from Monroe & Clark was not competent evidence in chief, nor was it in contradiction of any statement of the witness Courtenay. It seems to have been suggested to contradict not the evidence

given by Courtenay, but some supposed inference from his testimony.

III.

The evidence of the custom of leasing wharves in New York and other cities was so remote that it could not affect the case.

The defence did not rest on any law of Louisiana. The only practice which was in question was the custom or practice of the city of New Orleans. It was agreed that it had been the custom of that city to lease its wharves and farm its levee duties. (Statement of Facts, p. 15; fol. 199; p. 73.) This was sufficient and conclusive, and the evidence of a similar practice in other cities was at most surplusage.

The effect of this evidence was only to shew that the city of New Orleans followed the practice of other cities.

IV.

None of the exceptions, however, we submit, are the subject of review by this Court. The Statement of Facts is like a special verdict, or a case made subject to the opinion of the Court, and rulings as to evidence are not receivable.

Suydam v. Williamson, 20 How., 427.
Campbell v. Boyreau, 21 How., 223.

This Court is bound in cases brought from the Courts of Louisiana, where the trial has been had by consent before a Judge without a jury, to treat a Statement of Facts made by consent as a special verdict.

At the very utmost the only effect of an improper admission of evidence in such a case would be that the Court would reject the evidence and proceed to examine and decide the cause without it, as if it were not in the record. Its admission would "be no ground for reversing the judgment," if without the particular evidence there was evidence enough to sustain it.

Field v. the U.S., 9 Pet., 202.

The U.S. v. King, 7 How., 833, 844, 853.

V.

The question in the case, if the record presents any question on its merits, is whether the plaintiffs in the Court below were entitled to the judgment of the Court for damages as given by the Judge before whom the cause was tried upon the facts stated.

The *amount* of damages to the plaintiffs below is admitted and agreed to by the Statement of Facts. The wharf and sheds erected by the Company cost $65,000 [fol. 199]. The enclosure actually demolished by the city officers cost $7,000 [fol. 195], and the damage by its destruction and the increased expense of watchmen, etc., consequently incurred was $8,000 [fol. 200].

The Court entertained the action to stay or prevent the demolition of the structure, and properly retained it to award damages, when it turned out that a portion of the buildings which we sought to protect had been destroyed before the process of the Court could reach them.

Damages were also prayed as an original ground of action.

VI.

The lease made by Mayor Kennedy July 8th, 1865, to the New York Mail Steamship Company was valid and binding upon the city of New Orleans, and upon any succeeding authorities thereof, for the time of its duration.

a. Louisiana, in May, 1862, when the city of New Orleans was occupied by our troops, was in a state of war, and wholly under rebel dominion.

The city of New Orleans, its authorities, and its citizens were defiantly and flagrantly rebellious. They refused to acknowledge or to act under the authority of the United States.

b. The military authorities, therefore, for the purpose of "adequate protection for life and property," established a temporary or provisional administration of the government of New Orleans.

They had the right to do this, or to govern a country thus captured from an enemy by simple martial law.

In pursuing the milder course, and appointing officers to administer the government according to the municipal law of the State, the United States Government were clearly acting within their power as captors or recaptors of a portion of their territory which had been forcibly wrested and violently withheld from their jurisdiction.

c. Until this condition of things was terminated, and the State and all its subordinate municipal and

civil divisions reinstated by Congress, the officers exercising jurisdiction by military appointment were lawful as well as *de facto* governments in their various spheres, municipal and other.

d. These officers in the city of New Orleans preserved at least all the powers appertaining to the offices they were appointed to fill. There were no loyal men to elect so as to fill these offices. As a matter of necessity and duty to the people who had been subjugated, some government must be given them. As a grace and favor to them, that government was not martial law, but an administration of their own municipal institutions by the only men competent to administer them.

See the Venice, 2 Wallace, 258.

Act to provide for the more efficient government of the Rebel States, passed March 2, 1867.

Act supplementary to the same passed July 12, 1867.

Leitensdorfer v. Webb, 20 How., 176.

VII.

If the military authorities had power to fill the necessary offices, and constitute the necessary government for the city, the officers thus appointed were limited in their power and authority, only by the functions of the offices which they were designated to fill.

That the government of the United States had a right to fill these offices, and thus organize a government, results from public law and the law of war;

the principles on which such action proceeded have been recognized by this Court.

Leitensdorfer v. Webb, 20 How., 170.

Cross v. Harrison, 16 How., 164.

VIII.

The governments thus rightfully established in the recaptured territory did not cease when armed resistance was over. They continued until withdrawn or suspended by the sovereign power. As long as the State of Louisiana was not restored to the Union, and its citizens were not relieved from their disabilities, the officers and authorities established by the sovereign power of the Union were the lawful and the only governments of the State and city.

Cross v. Harrison, q.s.

Leitensdorfer v. Webb, q.s.

IX.

Leasing this wharf to the New York Mail Steamship Company was within the recognized powers, and according to the admitted practice of the city government of New Orleans during all its history.

It was an act wise and beneficial for the promotion of commerce, as well as such an act as the city government was accustomed to do.

Case, pp. 73–75.

X.

The New York Mail Steamship Company took the lease from the actual and legally constituted government of the city, and on its faith expended not less than $65,000 on the demised premises.

Case, p. 73; fol. 199.

XI.

The order of General Canby dated Feb. 9th, 1866, prohibiting for the future alienations of municipal property or franchises by the officers appointed by military authority for a period extending beyond the reorganization of the State and city, recognizes the fact and rightfulness of such grants made before the date of the order. Every implication from that order is in our favor. By its express terms it does not reach us.

Case, p. 74; fol. 203.

XII.

There is nothing like *postliminium* here, in fact, or fiction, or by analogy.

If this had been the case of a conquered country, held under our sway for four or five years, and then restored to its original government and people, the alienation of its public domain to citizens of the conquering country made while it was under our

dominion, could not be rightfully annulled or recalled by the restored government.

Phill. Intern. Law, I., p. 288.

Whea. Intern. Law, § 347, p. 438; Mr. Dana's Note.

But there has been no recapture or relinquishment by the United States. In allowing the people of the State who have purged themselves of complicity in the rebellion to resume the government of the State, the United States simply permits them to succeed to the administration of the government, as it has been restored and established by military power, and with the sanction of Congress, and not to supersede that government by a new or a restored government of their own.

The municipal governments now existing and exercising authority in Louisiana and New Orleans are a succession and continuation of the governments established by the United States through its military power, and not of the rebellious authorities existing before the conquest.

The period of military sovereignty is not to be regarded as an interregnum, but as the beginning of a restoration.

XIII.

The city of New Orleans and its present authorities are barred and estopped from denying the validity of the lease, and from any defence to this action.

They made no offer to return the rent notes until long after they invaded our possession, and after this suit was commenced.

They have never offered to return the money paid to take up our first eight notes, nor the money expended by us on the premises.

But what is absolutely conclusive as a ratification of this lease, the city, after its rehabilitation, and after the United States authorities had surrendered all control of its affairs and resigned its offices to officers elected by its citizens, *accepted rent from us on the lease.*

The very same functionaries who violently and without notice attacked and destroyed our property on this wharf, only a few days before received from us rent under the lease under which we held it, given by their predecessors in the name of the city.

Case, p. 73; fol. 197–8.

This was a complete ratification of the acts of the military mayor and bureaus, if any were needed.

Leasing the pier was within the corporate power of the city. The utmost that could be claimed against it would be that it was done by an unauthorized agent. Such an act can be ratified, and the acceptance of rent was a ratification.

Story on Agency, § 239–252.
2 Kent. Comm., 291.
Bank of Columbia v. Bateman, 7 Cranch, 299.
Bank U.S. v. Dandridge, 12 Whea., 74.
Perkins v. Wash. Ins. Co., 4 Cow., 645.
Am. Ins. Co. v. Oakley, 9 Paige, 496.
Magill v. Kauffman, 4 Serg. and R., 317.
Randall v. Van Vechten, 19 J. R., 60.
Peterson v. Mayor N. Y.; 17 N. Y. R., 449.

XIV.

In any possible aspect of the case the city authorities had no right, without notice or demand or legal proceedings, to enter on our possession and destroy our property.

XV.

The judgment of the Court below should be affirmed.

JAMES EMOTT,

Of Counsel for Defendant in Error.